



LODI CITY COUNCIL

Carnegie Forum
305 West Pine Street, Lodi

AGENDA – REGULAR MEETING

Date: April 18, 2012

Time: Closed Session 6:30 p.m.
Regular Meeting 7:00 p.m.

For information regarding this Agenda please contact:

Randi Johl, City Clerk
Telephone: (209) 333-6702

6:55 p.m. Invocation/Call to Civic Responsibility. Invocations/Calls may be offered by any of the various religious and non-religious organizations within and around the City of Lodi. These are voluntary offerings of private citizens, to and for the benefit of the Council. The views or beliefs expressed by the Speaker have not been previously reviewed or approved by the Council, and the Council does not endorse the beliefs or views of any speaker.

***NOTE:** All staff reports or other written documentation relating to each item of business referred to on the agenda are on file in the Office of the City Clerk, located at 221 W. Pine Street, Lodi, and are available for public inspection. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. To make a request for disability-related modification or accommodation contact the City Clerk's Office as soon as possible and at least 24 hours prior to the meeting date.*

C-1 Call to Order / Roll Call

C-2 Announcement of Closed Session

- a) Conference with Steve Schwabauer, City Attorney, and Dean Gualco, Human Resources Manager (Labor Negotiators), Regarding Unrepresented Executive Management, Lodi City Mid-Management Association, Unrepresented Confidential Employees, AFSCME General Services and Maintenance & Operators, International Brotherhood of Electrical Workers, Fire Mid-Managers, and Lodi Professional Firefighters Pursuant to Government Code §54957.6
- b) Conference with Steve Schwabauer, City Attorney (Labor Negotiator), Regarding Police Mid-Managers, Lodi Police Officers Association, and Lodi Police Dispatchers Association Pursuant to Government Code §54957.6

C-3 Adjourn to Closed Session

NOTE: THE FOLLOWING ITEMS WILL COMMENCE NO SOONER THAN 7:00 P.M.

C-4 Return to Open Session / Disclosure of Action

A. Call to Order / Roll Call

B. Presentations

- B-1 Presentation of Certificate of Recognition to Brian Watts for Life Saving Efforts

C. Consent Calendar (Reading; Comments by the Public; Council Action)

- C-1 Receive Register of Claims in the Amount of \$8,851,056.36 (FIN)
- C-2 Approve Minutes (CLK)
 - a) April 3 and 10, 2012 (Shirtsleeve Sessions)
 - b) April 4, 2012 (Regular Meeting)
 - c) April 10, 2012 (Special Meeting)
- C-3 Approve Specifications and Authorize Advertisement for Bids for Tree Maintenance for Fiscal Year 2012/13 (PW)
- C-4 Approve Specifications and Authorize Advertisement for Bids for Extruded Thermoplastic Lane Line Marking for Various City Streets for Fiscal Year 2012/13 (PW)

- Res. C-5 Adopt Resolution Approving Purchase of 2012 John Deere 210K Tractor Loader from Pape Machinery, of French Camp (\$92,659) (PW)
- Res. C-6 Adopt Resolution Authorizing the City Manager to Execute Contract for Roget Park Improvements, 2229 Tienda Drive, with Hemington Landscape Services, of Cameron Park (\$543,207.50), and Appropriating Funds (\$600,000) (PW)
- Res. C-7 Adopt Resolution Authorizing the City Manager to Execute Contract and Contract Extensions for Fixed Route, ADA Paratransit, and Demand Response Operations for Fiscal Years 2012/13 to 2014/15 with MV Transportation, Inc., of Fairfield (\$1,682,365 for Fiscal Year 2012/13) (PW)
- Res. C-8 Adopt Resolution Authorizing the City Manager to Execute Professional Services Agreement for Surface Water Treatment Plant Transition Management Services with Carollo Engineers, Inc., of Sacramento, and Appropriating Funds (\$203,900) (PW)
- Res. C-9 Adopt Resolution Authorizing the City Manager to Execute Amendment to Professional Services Agreement for Design Services for Grape Bowl Stadium with Siegfried Engineering, Inc., of Stockton (\$17,800), and Appropriating Funds (\$20,000) (PW)
- Res. C-10 Adopt Resolution Authorizing the City Manager to Execute Amendment to Professional Services Agreement for Development Impact Mitigation Fee Program Update with Harris and Associates, of Tracy (\$30,000), and Appropriating Funds (\$50,000) (PW)
- Res. C-11 Adopt Resolution Approving the Northern California Power Agency Legislative and Regulatory Affairs Program Agreement and Authorizing the City Manager to Execute Said Agreement (EUD)
- Res. C-12 Adopt Resolution Authorizing the City Manager to Execute a Consultant Services Agreement with Northern California Power Agency Regarding crmOrbit, Inc., and Allocate Public Benefit Program Funds (\$27,000) (EUD)
- Res. C-13 Adopt Resolution Authorizing the City Manager to Allocate \$25,000 in Public Benefit Program Funds for a Research, Development, and Demonstration Grant to Lodi Unified School District (EUD)
- Res. C-14 Adopt Resolution Approving the Application for the Department of Boating and Waterways Grant (PRCS)
- C-15 Receive Report Regarding League of California Cities Communications Pertaining to Assembly Bill 1627 and Senate Bill 1498 (CLK)
- Res. C-16 Adopt Resolution Approving Lodi Professional Firefighters Memorandum of Understanding for the Period of January 1, 2012 through November 30, 2013 (CM)
- C-17 Set Public Hearing for May 2, 2012, to Approve the Final 2012/13 Action Plan for the Community Development Block Grant Program (CD)

D. Comments by the Public on Non-Agenda Items

THE TIME ALLOWED PER NON-AGENDA ITEM FOR COMMENTS MADE BY THE PUBLIC IS LIMITED TO FIVE MINUTES.

The City Council cannot deliberate or take any action on a non-agenda item unless there is factual evidence presented to the City Council indicating that the subject brought up by the public does fall into one of the exceptions under Government Code Section 54954.2 in that (a) there is an emergency situation, or (b) the need to take action on the item arose subsequent to the agenda's being posted.

Unless the City Council is presented with this factual evidence, the City Council will refer the matter for review and placement on a future City Council agenda.

E. Comments by the City Council Members on Non-Agenda Items

F. Comments by the City Manager on Non-Agenda Items

G. Public Hearings

- Ord. G-1 Public Hearing to Consider Amending Lodi Municipal Code Chapter 13.20 – Electrical Service –
(Introduce) by Repealing and Reenacting Section 13.20.175, “Schedule ECA – Energy Cost Adjustment,”
in its Entirety to Include Flat Energy Cost Adjustment Option (EUD)
- Res. G-2 Public Hearing to Consider Adopting Resolution Setting Pre-Approved Engineering News
Record Adjustment Index for Wastewater Rates for Residential, Commercial, and Industrial
Customers (PW)

H. Communications

- H-1 Post for Vacancy on the Lodi Senior Citizens Commission (CLK)

I. Regular Calendar – None

J. Ordinances – None

K. Adjournment

Pursuant to Section 54954.2(a) of the Government Code of the State of California, this agenda was posted at least 72 hours in advance of the scheduled meeting at a public place freely accessible to the public 24 hours a day.

Randi Johl
City Clerk



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Presentation of Certificate of Recognition to Brian Watts for Life Saving Efforts

MEETING DATE: April 18, 2012

PREPARED BY: City Clerk

RECOMMENDED ACTION: Mayor Mounce present Certificate of Recognition to Brian Watts for life saving efforts.

BACKGROUND INFORMATION: On March 23, 2012, Lodi citizen Brian Watts bravely put himself in harms way to save a driver of a dump truck who had been struck by another vehicle and was trapped in the truck, which was leaking fuel and engulfed in flames. Mayor Mounce will present a Certificate of Recognition to Mr. Watts for his heroic life saving efforts.

FISCAL IMPACT: None.

FUNDING AVAILABLE: None.

Randi Johl
City Clerk

RJ/JMR

APPROVED: _____
Konradt Bartlam, City Manager



CITY OF LODI COUNCIL COMMUNICATION

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AGENDA TITLE: Receive Register of Claims through March 29, 2012 in the Total Amount of \$8,851,056.36.

MEETING DATE: April 18, 2012

PREPARED BY: Financial Services Manager

RECOMMENDED ACTION: Receive the attached Register of Claims for \$8,851,056.36.

BACKGROUND INFORMATION: Attached is the Register of Claims in the amount of \$8,851,056.36 through 3/29/12. Also attached is Payroll in the amount of \$1,589,613.81.

FISCAL IMPACT: Not applicable.

FUNDING AVAILABLE: As per attached report.

Ruby R. Paiste, Financial Services Manager

RRP/rp

Attachments

APPROVED: _____
Konradt Bartlam, City Manager

Accounts Payable
Council Report

Page - 1
Date - 04/09/12
Amount

| As of Thursday | Fund | Name | Amount |
|-------------------|-------|--------------------------------|--------------|
| 03/29/12 | 00100 | General Fund | 1,543,531.42 |
| | 00120 | Vehicle Replacement Fund | 363.92 |
| | 00123 | Info Systems Replacement Fund | 5,217.68 |
| | 00160 | Electric Utility Fund | 3,828,418.84 |
| | 00161 | Utility Outlay Reserve Fund | 59,237.94 |
| | 00164 | Public Benefits Fund | 13,340.49 |
| | 00166 | Solar Surcharge Fund | 7,000.00 |
| | 00170 | Waste Water Utility Fund | 546,179.99 |
| | 00171 | Waste Wtr Util-Capital Outlay | 69,303.51 |
| | 00172 | Waste Water Capital Reserve | 2,250.00 |
| | 00175 | IMF Storm Facilities | 54,404.69 |
| | 00180 | Water Utility Fund | 328,854.28 |
| | 00181 | Water Utility-Capital Outlay | 1,438,204.56 |
| | 00210 | Library Fund | 9,749.58 |
| | 00230 | Asset Seizure Fund | 50.00 |
| | 00234 | Local Law Enforce Block Grant | 7,950.00 |
| | 00236 | LPD-OTS Grants | 2,377.63 |
| | 00260 | Internal Service/Equip Maint | 39,513.28 |
| | 00270 | Employee Benefits | 4,358.31 |
| | 00300 | General Liabilities | 13,921.97 |
| | 00310 | Worker's Comp Insurance | 9,708.33 |
| | 00321 | Gas Tax-2105,2106,2107 | 11,197.37 |
| | 00325 | Measure K Funds | 3,499.70 |
| | 00340 | Comm Dev Special Rev Fund | 93.27 |
| | 00347 | Parks, Rec & Cultural Services | 25,726.67 |
| | 00410 | Bond Interest & Redemption | 511,778.13 |
| | 00459 | H U D | 13,359.34 |
| | 01211 | Capital Outlay/General Fund | 7,704.78 |
| | 01212 | Parks & Rec Capital | 10,060.00 |
| | 01217 | IMF Parks & Rec Facilities | 225.00 |
| | 01218 | IMF General Facilities-Adm | 23,199.00 |
| | 01250 | Dial-a-Ride/Transportation | 9,976.32 |
| | 01251 | Transit Capital | 176,426.96 |
| | 01410 | Expendable Trust | 60,995.67 |
| Sum | | | 8,838,178.63 |
| | 00184 | Water PCE-TCE-Settlements | 84.00 |
| | 00190 | Central Plume | 12,793.73 |
| Sum | | | 12,877.73 |
| Total Sum | | | 8,851,056.36 |

Council Report for Payroll

Page - 1
Date - 04/09/12

| Payroll | Pay Per Date | Co | Name | Gross Pay |
|-------------------|--------------|-------|--------------------------------|--------------|
| Regular | 04/01/12 | 00100 | General Fund | 1,084,615.76 |
| | | 00160 | Electric Utility Fund | 128,421.44 |
| | | 00161 | Utility Outlay Reserve Fund | 8,700.50 |
| | | 00164 | Public Benefits Fund | 3,405.40 |
| | | 00170 | Waste Water Utility Fund | 95,590.70 |
| | | 00180 | Water Utility Fund | 155.52 |
| | | 00210 | Library Fund | 27,682.76 |
| | | 00235 | LPD-Public Safety Prog AB 1913 | 1,422.79 |
| | | 00260 | Internal Service/Equip Maint | 14,935.53 |
| | | 00321 | Gas Tax-2105,2106,2107 | 27,027.99 |
| | | 00340 | Comm Dev Special Rev Fund | 21,512.81 |
| | | 00345 | Community Center | 259.18 |
| | | 00347 | Parks, Rec & Cultural Services | 101,654.40 |
| | | 01250 | Dial-a-Ride/Transportation | 6,794.97 |
| Pay Period Total: | | | | |
| Sum | | | | 1,522,179.75 |
| Retiree | 04/30/12 | 00100 | General Fund | 67,434.06 |
| Pay Period Total: | | | | |
| Sum | | | | 67,434.06 |



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Approve Minutes
a) April 3, 2012 (Shirtsleeve Session)
b) April 4, 2012 (Regular Meeting)
c) April 10, 2012 (Shirtsleeve Session)
d) April 10, 2012 (Special Meeting)

MEETING DATE: April 18, 2012

PREPARED BY: City Clerk

RECOMMENDED ACTION: Approve the following minutes as prepared:
a) April 3, 2012 (Shirtsleeve Session)
b) April 4, 2012 (Regular Meeting)
c) April 10, 2012 (Shirtsleeve Session)
d) April 10, 2012 (Special Meeting)

BACKGROUND INFORMATION: Attached are copies of the subject minutes marked Exhibit A through D, respectively.

FISCAL IMPACT: None.

FUNDING AVAILABLE: None required.

Randi Johl
City Clerk

Attachments

APPROVED: _____
Konradt Bartlam, City Manager

**LODI CITY COUNCIL
SHIRTSLEEVE SESSION
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, APRIL 3, 2012**

A. Roll Call by City Clerk

An Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was held Tuesday, April 3, 2012, commencing at 7:00 a.m.

Present: Council Member Hansen, Council Member Johnson, Mayor Pro Tempore Nakanishi, and Mayor Mounce

Absent: Council Member Katzakian

Also Present: City Manager Bartlam, City Attorney Schwabauer, and City Clerk Johl

B. Topic(s)

B-1 Receive Update on Treatment and Monitoring Activities for PCE/TCE at Central, Southern, Western, and Northern Plumes (PW)

City Manager Bartlam briefly introduced the subject matter of the PCE cleanup program.

Public Works Director Wally Sandelin provided a PowerPoint presentation regarding the PCE cleanup program. Specific topics of discussion included plume testing and groundwater monitoring, Southern Plume status, Western Plume status, Northern Plume status, Central Plume status, groundwater trends, shallow zone, intermediate zone, deep zone, permanent facilities, and source area treatment.

In response to Mayor Mounce, Mr. Sandelin stated in the Southern Plume the new well is a monitoring well only for sampling purposes.

In response to Council Member Hansen, Mr. Sandelin stated the monitoring will continue until such time as the City is told by the State to discontinue, which will likely be at least a year.

In response to Mayor Mounce, Mr. Sandelin stated the noise factor with monitoring wells is limited to the actual drilling only as the sampling itself does not have noise.

In response to Council Member Hansen, Mr. Sandelin stated the new wells in the Western Plume are costing more because of the level of drilling and depth.

In response to Council Member Johnson, Mr. Sandelin stated clusters are drilled to different depth levels to determine migration patterns.

In response to Council Member Johnson and Mayor Mounce, City Attorney Schwabauer stated there is a shared data agreement, which was a part of the settlement agreement, and staff is having difficulty getting a hold of Luster-Cal's consultant to force sharing of the data.

In response to Council Member Hansen, Mr. Sandelin stated the water level in the Central Plume is 45 to 50.

In response to Mayor Mounce, Mr. Schwabauer confirmed that the wells in the Central Plume across the street from City Hall are vapor and extraction wells and a brief discussion ensued regarding the noise levels associated with the different types of wells.

In response to Mayor Pro Tempore Nakanishi, Mr. Sandelin stated that, with respect to the decision-making process for the location of wells in the City, it is a joint effort by the City and the regional board.

In response to Council Member Hansen, Mr. Sandelin stated he is confident the City will continue to have the resources for the cleanup effort and the challenge lies with convincing the regional board that spot treatments are not efficient and cost effective. Further, Mr. Sandelin stated as PCE migrates to the outside of the City boundaries it goes through a degradation and dissolution process whereby it becomes TCE and then DCE, which exists below the required limits. Mr. Sandelin stated the City has been participating in the DCE monitoring program since 2006.

In response to Council Member Johnson, Mr. Sandelin stated the regional board will likely not remove any deep levels of monitoring until it discontinues all monitoring. Mr. Sandelin stated when monitoring ends in specific locations it is negotiated as compliance is shown.

In response to Mayor Pro Tempore Nakanishi, Mr. Sandelin confirmed the assumption that, even if the City were not involved in PCE/TCE efforts, the City's drinking supply was still safe. Mr. Bartlam stated this assumption is also confirmed by way of monitoring versus action steps. Mr. Schwabauer stated the exact amount of PCE that was originally in the ground is unknown and experts have differing opinions.

In response to Council Member Hansen, Mr. Sandelin stated another groundwater extraction well is being built because the former well design had a shortcoming and another approach is being utilized.

In response to Council Member Johnson, Mr. Sandelin stated the City is spending \$250,000 a year on the Central Plume facility, which is less than originally predicted, and some of the work is being performed by staff while the monitoring is being done by a consultant.

In response to Mayor Pro Tempore Nakanishi, Mr. Sandelin stated the regional board does have local history with PCE at Lincoln Center in Stockton.

In response to Myrna Wetzel, Mr. Bartlam stated the amount of time for degradation and dissolution is unknown as it took 60 years for the water to travel a few blocks.

In response to Ed Miller, Mr. Schwabauer stated PCE in the Central Plume came from a variety of sources including dry cleaners and Lodi News Sentinel although the exact amount for each is uncertain. Settlement in the Central Plume with the various litigants was \$7 million.

Mr. Sandelin conducted a brief tour of the Central Plume facility located behind the Oddfellows Building on Pine Street across from City Hall.

C. Comments by Public on Non-Agenda Items - None

D. Adjournment

No action was taken by the City Council. The meeting was adjourned at 8:05 a.m.

ATTEST:

Randi Johl
City Clerk

**LODI CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, APRIL 4, 2012**

C-1 Call to Order / Roll Call

The City Council Closed Session meeting of April 4, 2012, was called to order by Mayor Mounce at 6:00 p.m.

Present: Council Member Hansen, Council Member Johnson, and Mayor Mounce
Absent: Council Member Katzakian, and Mayor Pro Tempore Nakanishi
Also Present: City Manager Bartlam, City Attorney Schwabauer, and City Clerk Johl

C-2 Announcement of Closed Session

- a) Conference with Janice Magdich, Deputy City Attorney, and Dean Gualco, Human Resources Manager (Labor Negotiators), Regarding Unrepresented Executive Management, Lodi City Mid-Management Association, Unrepresented Confidential Employees, AFSCME General Services and Maintenance & Operators, International Brotherhood of Electrical Workers, Fire Mid-Managers, and Lodi Professional Firefighters Pursuant to Government Code §54957.6
- b) Conference with Janice Magdich, Deputy City Attorney (Labor Negotiator), Regarding Police Mid-Managers, Lodi Police Officers Association, and Lodi Police Dispatchers Association Pursuant to Government Code §54957.6

C-3 Adjourn to Closed Session

At 6:00 p.m., Mayor Mounce adjourned the meeting to a Closed Session to discuss the above matters. The Closed Session adjourned at 6:35 p.m.

C-4 Return to Open Session / Disclosure of Action

At 7:00 p.m., Mayor Mounce reconvened the City Council meeting, and City Attorney Schwabauer disclosed the following actions.

Items C-2 (a) and C-2 (b) were discussion and direction only with no reportable action.

A. Call to Order / Roll Call

The Regular City Council meeting of April 4, 2012, was called to order by Mayor Mounce at 7:00 p.m.

Present: Council Member Hansen, Council Member Johnson, and Mayor Mounce
Absent: Council Member Katzakian, and Mayor Pro Tempore Nakanishi
Also Present: City Manager Bartlam, City Attorney Schwabauer, and City Clerk Johl

B. Presentations

B-1 Donate Life Month Proclamation

Mayor Mounce presented a proclamation to Donna Otto, Donate Life Ambassador and transplant recipient, proclaiming the month of April 2012 as "Donate Life Month" in the City of Lodi.

B-2 Sexual Assault Awareness Month Proclamation

Mayor Mounce presented a proclamation to Jazmin Hurtado, Sexual Assault Prevention Specialist with the Women's Center of San Joaquin County, proclaiming April 2012 as "Sexual Assault Awareness Month" in the City of Lodi.

B-3 Keep Lodi Beautiful Month Proclamation (CD)

Mayor Mounce presented a proclamation to Neighborhood Services Manager Joseph Wood and Waste Management representative Jennelle Bechthold proclaiming the month of April 2012 as "Keep Lodi Beautiful Month" in the City of Lodi.

B-4 National Public Safety Telecommunicators Week Proclamation (PD)

Mayor Mounce presented a proclamation to Reyes Gonzales and Kelly Michaels with the Police Department Communications Center proclaiming the week of April 8 - 14, 2012, as "National Public Safety Telecommunicators Week" in the City of Lodi.

B-5 National Volunteers Week Proclamation (PD)

Mayor Mounce presented a proclamation to Jeanie Biskup with the Lodi Police Department and Yvette Herrera with the Lodi Public Library proclaiming the week of April 15 - 21, 2012, as "National Volunteers Week" in the City of Lodi.

B-6 Presentation of Library Volunteer of the Year Award (LIB)

Frank Kooger, Vice-President of the Library Board of Trustees, presented the 2012 Library Volunteer of the Year Award to JoAnne McLane Rantz.

C. Consent Calendar (Reading; Comments by the Public; Council Action)

Council Member Hansen made a motion, second by Mayor Mounce, to approve the following items hereinafter set forth, **except those otherwise noted**, in accordance with the report and recommendation of the City Manager.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Johnson, and Mayor Mounce

Noes: None

Absent: Council Member Katzakian, and Mayor Pro Tempore Nakanishi

C-1 Receive Register of Claims in the Amount of \$2,474,702.70 (FIN)

Claims were approved in the amount of \$2,474,702.70.

C-2 Approve Minutes (CLK)

The minutes of March 20, 2012 (Shirtsleeve Session), March 21, 2012 (Regular Meeting), and March 27, 2012 (Shirtsleeve Session) were approved as written.

C-3 Approve Plans and Specifications and Authorize Advertisement for Bids for Well 6R Granular Activated Carbon Treatment System (PW)

This item was pulled for further discussion by Mayor Mounce.

In response to Mayor Mounce, Public Works Director Wally Sandelin stated staff has not received any objections from the property owners that were contacted in person and by mail.

Mayor Mounce made a motion, second by Council Member Johnson, to approve plans and specifications and authorize advertisement for bids for Well 6R Granular Activated Carbon Treatment System.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Johnson, and Mayor Mounce

Noes: None

Absent: Council Member Katzakian, and Mayor Pro Tempore Nakanishi

C-4 Approve Plans and Specifications and Authorize Advertisement for Bids for 2012 Disabled Access Improvements, Various Locations (PW)

Approved the plans and specifications and authorized advertisement for bids for 2012 Disabled Access Improvements, Various Locations.

C-5 Approve Plans and Specifications and Authorize Advertisement for Bids for 2012 Alley Reconstruction Project (PW)

This item was pulled for further discussion by Mayor Mounce.

In response to Mayor Mounce, Public Works Director Wally Sandelin provided a brief overview of the various alley improvements in the City that have been successfully completed.

Mayor Mounce made a motion, second by Council Member Johnson, to approve plans and specifications and authorize advertisement for bids for 2012 Alley Reconstruction Project.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Johnson, and Mayor Mounce

Noes: None

Absent: Council Member Katzakian, and Mayor Pro Tempore Nakanishi

C-6 Accept Improvements Under Contract for Central Plume PCE/TCE Remedial Measures Project and Adopt Resolution Authorizing the City Manager to Execute Professional Services Agreement and Extensions with Diède Construction Inc., of Woodbridge, for Operations and Maintenance Services and Appropriating Funds (\$558,870) (PW)

Accepted the improvements under contract for Central Plume PCE/TCE Remedial Measures Project and adopted Resolution No. 2012-32 authorizing the City Manager to execute professional services agreement and extensions with Diède Construction Inc., of Woodbridge, for operations and maintenance services and appropriating funds in the amount of \$558,870.

C-7 Adopt Resolution Authorizing the City Manager to Execute Amended Professional Services Agreement with HDR Engineering, Inc., of Folsom, for Construction Administration Services for Surface Water Treatment Facility (\$9,111) (PW)

Adopted Resolution No. 2012-33 authorizing the City Manager to execute amended professional services agreement with HDR Engineering, Inc., of Folsom, for construction administration

services for Surface Water Treatment Facility in the amount of \$9,111.

- C-8 Adopt Resolution Approving Memorandum of Understanding Between the City of Lodi and the Lodi Police Mid-Management Organization for the Period of January 1, 2012 through December 31, 2013 (CM)

This item was continued to a Special Meeting of the City Council to be held on April 10, 2012, due to the lack of a majority vote of the entire legislative body and the absence of two Council Members.

- C-9 Adopt Resolution Approving City of Lodi Risk Management and Compliance Program (EUD)

Adopted Resolution No. 2012-34 approving City of Lodi Risk Management and Compliance Program.

- C-10 Authorize the Mayor, on Behalf of the City Council, to Send a Letter of Support to AB 1779 - Intercity Passenger Rail Act of 2012 for San Joaquin Corridor (Galgiani) (CLK)

Authorized the Mayor, on behalf of the City Council, to send a letter of support to AB 1779 - Intercity Passenger Rail Act of 2012 for San Joaquin Corridor (Galgiani).

- C-11 Authorize the Mayor, on Behalf of the City Council, to Send a Letter of Support to HR 3544 -Litigation Reform for Cities (McClintock) (CLK)

Authorized the Mayor, on behalf of the City Council, to send a letter of support to HR 3544 - Litigation Reform for Cities (McClintock).

- C-12 Authorize the Mayor, on Behalf of the City Council, to Send a Letter of Support to HR 3125 -Earthquake Insurance Affordability Act (CLK)

Authorized the Mayor, on behalf of the City Council, to send a letter of support to HR 3125 - Earthquake Insurance Affordability Act.

- C-13 Set Public Hearing for April 18, 2012, to Consider Amending Lodi Municipal Code Chapter 13.20 - Electrical Service - by Repealing and Reenacting Section 13.20.175, "Schedule ECA - Energy Cost Adjustment," in its Entirety to Include Flat Energy Cost Adjustment Option (EUD)

Set public hearing for April 18, 2012, to consider amending Lodi Municipal Code Chapter 13.20 - Electrical Service - by repealing and reenacting Section 13.20.175, "Schedule ECA - Energy Cost Adjustment," in its entirety to include flat energy cost adjustment option.

- D. Comments by the Public on Non-Agenda Items
THE TIME ALLOWED PER NON-AGENDA ITEM FOR COMMENTS MADE BY THE PUBLIC IS LIMITED TO FIVE MINUTES. The City Council cannot deliberate or take any action on a non-agenda item unless there is factual evidence presented to the City Council indicating that the subject brought up by the public does fall into one of the exceptions under Government Code Section 54954.2 in that (a) there is an emergency situation, or (b) the need to take action on the item arose subsequent to the agenda's being posted. Unless the City Council is presented with this factual evidence, the City Council will refer the matter for review and placement on a future City Council agenda.

None.

E. Comments by the City Council Members on Non-Agenda Items

Council Member Hansen commended the Police Mid-Management group on its efforts in successfully negotiating its Memorandum of Understanding and discussed new jobs created by the Lodi Energy Center, the status of Highway 12 improvements, and the recent commission meeting of the Northern California Power Agency.

Council Member Johnson reported on his attendance at the meeting of the League of California Cities' Employee Relations Committee, stating that the Legislature is not likely to engage in meaningful pension reform in the near future. Mr. Johnson also asked the public to submit program ideas to the Parks and Recreation Commission.

Mayor Mounce reported on her attendance at a Boy Scout Troop meeting to earn the government badge and invited the public to the Arbor Day celebration at DeBenedetti Park on April 7, 2012.

F. Comments by the City Manager on Non-Agenda Items

None.

G. Public Hearings - None

H. Communications

H-1 Post for Expiring Terms and Vacancies on the Greater Lodi Area Youth Commission (CLK)

Council Member Hansen made a motion, second by Council Member Johnson, to direct the City Clerk to post for the following expiring terms and vacancies:

Greater Lodi Area Youth Commission

Adult Advisors:

Elizabeth Mazzeo, term to expire May 31, 2012

Jeffrey Palmquist, term to expire May 31, 2012

Summer Pennino, term to expire May 31, 2012

Student Members:

Tyler Bartlam, term to expire May 31, 2012

Carson Kautz, term to expire May 31, 2012

Alex Maldonado, term to expire May 31, 2012

Kelley McConahey, term to expire May 31, 2012

Allison Schatz, term to expire May 31, 2012

Dipa Patel, term to expire May 31, 2013

Kinsey Green, term to expire May 31, 2013

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Johnson, and Mayor Mounce

Noes: None

Absent: Council Member Katzakian, and Mayor Pro Tempore Nakanishi

H-2 Appointments to the Lodi Improvement Committee (CLK)

Council Member Hansen made a motion, second by Council Member Johnson, to make the following appointments:

Lodi Improvement Committee

Fran Forkas, term to expire March 1, 2015

Lisa Nixon, term to expire March 1, 2015

Robert Takeuchi, term to expire March 1, 2015

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Johnson, and Mayor Mounce

Noes: None

Absent: Council Member Katzakian, and Mayor Pro Tempore Nakanishi

I. Regular Calendar - None

J. Ordinances - None

K. Adjournment

There being no further business to come before the City Council, the meeting was adjourned at 7:40 p.m.

ATTEST:

Randi Johl
City Clerk

**LODI CITY COUNCIL
SHIRTSLEEVE SESSION
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, APRIL 10, 2012**

A. Roll Call by City Clerk

An Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was held Tuesday, April 10, 2012, commencing at 7:25 a.m.

Present: Council Member Hansen, Council Member Johnson, Council Member Katzakian, Mayor Pro Tempore Nakanishi, and Mayor Mounce

Absent: None

Also Present: City Manager Bartlam, City Attorney Schwabauer, and City Clerk Johl

B. Topic(s)

B-1 Receive Presentation on San Joaquin County Enterprise Zone (CD)

Fran Aguilera of the San Joaquin County Enterprise Zone provided a brief PowerPoint presentation regarding the same. Specific topics of discussion included the history of the enterprise zone, an overview of enterprise zones, purpose of the California enterprise zone program, benefits of enterprise zones, hiring tax credits, targeted employment area (TEA), incentive benefits, annual report, presentations and workshops, zone attraction and retention, business contacts, hiring vouchers, return on investment, benefiting businesses, 2011 expansion into Ripon and Escalon, and enterprise zone partners.

In response to Council Member Johnson, Mr. Aguilera stated the 36% unemployment figure represents the cumulative unemployment number based on the most distressed areas in the zone.

In response to Council Member Hansen, Mr. Bartlam stated the 36% unemployment figure is representative of the worst areas within the shown mapped area of the County.

In response to Council Member Hansen, Mr. Aguilera stated the use tax credit for machinery and replacement parts is primarily applicable in the manufacturing industry, is used when equipment is brought in for use from outside of California, and is the equivalent of sales tax.

In response to Mayor Mounce, Mr. Aguilera stated staff is continuing its communication efforts with accounting firms and businesses in an attempt to get more businesses to take the actual credit.

In response to Council Member Hansen, Mr. Aguilera stated a business may be able to receive the TEA credit if it hires an employee with a misdemeanor or felony background.

In response to Mayor Mounce, Mr. Aguilera stated the City should continue to be concerned about the elimination of the TEA program at the Sacramento level.

In response to Mayor Mounce, Mr. Aguilera stated there are many ways to qualify for the credit but it can be as simple as providing a statement in the required documentation.

In response to Council Member Hansen, Mr. Aguilera stated those who are participating in the enterprise zone programs and receiving the tax credits are not taking away from those who are not in enterprise zones as the program is an incentive for those areas that traditionally are not as

attractive for businesses.

In response to Mayor Pro Tempore Nakanishi, Mr. Aguilera stated the program provides a five-year tax credit for qualifying businesses, each City pays proportionately for the enterprise zone, and the San Joaquin enterprise zone is a County agency.

In response to Council Member Katzakian, Mr. Aguilera stated there are 42 enterprise zones in the State of California, including several in surrounding counties, and the program is highly competitive because it is based on a points structure.

In response to Council Member Johnson, Mr. Aguilera stated there is a concern that if there is a two-thirds control of the Legislature by either party then enterprise zones may be eliminated because the Legislature has a tendency to vote along party lines.

In response to Mayor Pro Tempore Nakanishi, Mr. Aguilera confirmed that the two-thirds requirement comes into play because the removal of a tax credit is considered a tax increase, which requires a two-thirds vote.

In response to Ed Miller, Mr. Aguilera stated the tax credit per qualifying employee is approximately \$37,500.

In response to Sam Karufa, Mr. Aguilera stated contractors may use the tax credit but only if more than 50% of the work is being performed in the zone on an annual basis.

Ray Crow of the Chamber of Commerce commended the staff of the San Joaquin County Enterprise Zone on its efforts to communicate the benefits of the program to local businesses.

C. Comments by Public on Non-Agenda Items

None.

D. Adjournment

No action was taken by the City Council. The meeting was adjourned at 8:15 a.m

ATTEST:

Randi Johl
City Clerk

**LODI CITY COUNCIL
SPECIAL CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, APRIL 10, 2012**

C-1 Call to Order / Roll Call

The City Council Closed Session meeting of April 10, 2012, was called to order by Mayor Mounce at 7:00 a.m.

Present: Council Member Hansen, Council Member Johnson, Council Member Katzakian, Mayor Pro Tempore Nakanishi, and Mayor Mounce

Absent: None

Also Present: City Manager Bartlam, City Attorney Schwabauer, and City Clerk Johl

C-2 Announcement of Closed Session

- a) Conference with Steve Schwabauer, City Attorney, and Dean Gualco, Human Resources Manager (Labor Negotiators), Regarding Unrepresented Executive Management, Lodi City Mid-Management Association, Unrepresented Confidential Employees, AFSCME General Services and Maintenance & Operators, International Brotherhood of Electrical Workers, Fire Mid-Managers, and Lodi Professional Firefighters Pursuant to Government Code §54957.6
- b) Conference with Steve Schwabauer, City Attorney (Labor Negotiator), Regarding Police Mid-Managers, Lodi Police Officers Association, and Lodi Police Dispatchers Association Pursuant to Government Code §54957.6

C-3 Adjourn to Closed Session

At 7:00 a.m., Mayor Mounce adjourned the meeting to a Closed Session to discuss the above matters. The Closed Session adjourned at 7:20 a.m.

C-4 Return to Open Session / Disclosure of Action

At 7:20 a.m., Mayor Mounce reconvened the City Council meeting, and City Attorney Schwabauer disclosed the following actions.

Items C-2 (a) and C-2 (b) were discussion only with no reportable action.

A. Call to Order / Roll Call

The Special City Council meeting of April 10, 2012, was called to order by Mayor Mounce at 7:20 a.m.

B-1 Adopt Resolution Approving Memorandum of Understanding Between the City of Lodi and the Lodi Police Mid-Management Organization for the Period of January 1, 2012 through December 31, 2012 (CM)

Council Member Hansen made a motion, second by Council Member Katzakian, to adopt Resolution No. 2012-35 approving Memorandum of Understanding between the City of Lodi and the Lodi Police Mid-Management Organization for the period of January 1, 2012 through December 31, 2012.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Katzakian, Mayor Pro Tempore Nakanishi,
and Mayor Mounce

Noes: Council Member Johnson

Absent: None

B-2 Adopt Resolution Approving Lodi Professional Firefighters Memorandum of Understanding
for the Period of January 1, 2012 through November 30, 2013 (CM)

This item was continued to the April 18, 2012, Regular City Council meeting to allow additional
time for review of the documentation.

C. Adjournment

There being no further business to come before the City Council, the meeting was adjourned at
7:25 a.m.

ATTEST:

Randi Johl
City Clerk



CITY OF LODI COUNCIL COMMUNICATION

TM

AGENDA TITLE: Approve Specifications and Authorize Advertisement for Bids for Tree Maintenance for Fiscal Year 2012/13

MEETING DATE: April 18, 2012

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Approve specifications and authorize advertisement for bids for tree maintenance for Fiscal Year 2012/13.

BACKGROUND INFORMATION: This project provides for the structural pruning, maintenance trimming, emergency calls, and removal of City trees at various locations throughout the City for Fiscal Year 2012/13. The project will also include removal of 40 Modesto Ash trees, 39 Raywood Ash (Phase II of the Lower Sacramento Road tree replacement project), and tree spraying. The Phase II project includes the planting of 39 15-gallon Podocarpus gracilior "Fern Cloud" bush type plants. Including the Phase II project with the tree maintenance contract should result in a cost savings. An objective of this contract is to improve the health of our urban forest and reduce costs associated with this effort.

In addition to the aforementioned work, the contract will secure pricing for other miscellaneous tree work which may include maintenance pruning (structural and clearance) and crown reductions, tree planting, tree removals, stump grinding, mistletoe removal, tree pest control, and emergency call outs. Recently, much of the annual tree trimming budget was spent on tree pruning, tree removals, and emergency responses due to storm-related damage. The contract provides for individual tree pruning, which is more effective than grid pruning, as practiced in the past. The contract will be for one year with two one-year extensions, if mutually agreeable.

Mistletoe pruning is included along Church Street between Lodi Avenue and Kettleman Lane. Of the approximately 200 affected trees, 23 trees will be removed due to the extent of infestation and damage, and the remaining trees will be pruned to remove the mistletoe.

The specifications are on file in the Public Works Department. The planned bid opening date is May 9, 2012. The project estimate is \$200,000.

FISCAL IMPACT: Selective tree maintenance improves tree health, which will reduce the number of emergency calls.

FUNDING AVAILABLE: Funding will be identified at contract award.

F. Wally Sandelin
Public Works Director

Prepared by Kathryn E. Garcia, Compliance Engineer
FWS/KMG/pmf
cc: Deputy Public Works Director – Utilities
Compliance Engineer

APPROVED: _____
Konradt Bartlam, City Manager



CITY OF LODI

COUNCIL COMMUNICATION

TM

AGENDA TITLE: Approve Specifications and Authorize Advertisement for Bids for Extruded Thermoplastic Lane Line Marking for Various City Streets for Fiscal Year 2012/13

MEETING DATE: April 18, 2012

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Approve specifications and authorize advertisement for bids for extruded thermoplastic lane line marking for various City streets for Fiscal Year 2012/13.

BACKGROUND INFORMATION: This project will apply extruded thermoplastic product on approximately 30 percent of all lane line marked City streets.

Extruded thermoplastic material has proven to be a superior product to sprayed thermoplastic. Although extruded thermoplastic costs approximately 12 percent more than sprayed thermoplastic, it is expected to last 67 percent longer (five years vs. three years).

A recap of the types of lane line markings and quantities for this contract is shown below:

| <u>LANE LINE TYPE</u> | <u>MILES</u> |
|-----------------------|--------------|
| 4" Broken White | 7.82 |
| 4" Broken Yellow | 3.21 |
| 6" Broken White | 1.19 |
| Double 4" Yellow | 8.72 |
| 4" Solid White | 1.55 |
| 6" Solid White | 6.27 |
| 8" Solid White | 0.90 |
| Continuous Left | 3.72 |
| Total Miles | 33.38 |

Staff recommends Council approve specifications and authorize advertisement for bids for extruded thermoplastic lane line marking on various City streets.

The specifications are on file in the Public Works Department. The planned bid opening date is May 9, 2012. The project estimate is \$80,000.

FISCAL IMPACT: The annual cost for traffic stripes will decrease by 33 percent using the longer-life product.

FUNDING AVAILABLE: Funding for this project will be specified at the time of contract award.

F. Wally Sandelin
Public Works Director

Prepared by Kathryn E. Garcia, Compliance Engineer
FWS/KMG/pmf

cc: Deputy Public Works Director – Utilities

Compliance Engineer

Street Supervisor Watson

APPROVED: _____
Konradt Bartlam, City Manager



CITY OF LODI COUNCIL COMMUNICATION

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AGENDA TITLE: Adopt Resolution Approving Purchase of 2012 John Deere 210K Tractor Loader from Pape Machinery, of French Camp (\$92,659)

MEETING DATE: April 18, 2012

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt resolution approving purchase of 2012 John Deere 210K tractor loader from Pape Machinery, of French Camp, in the amount of \$92,659.

BACKGROUND INFORMATION: The newly-constructed biosolids dewatering facility at White Slough Water Pollution Control Facility requires use of a dedicated tractor loader to move dewatered biosolids for additional drying and to load biosolids into trucks for land application. The new tractor loader will replace Vehicle No. 04-040, a 1994 John Deere 244E tractor loader that is retired from streets operations and not suitable for the requirements of the new biosolids dewatering facility operation.

The cost of the new vehicle was included in the contract for the biosolids dewatering facility construction to properly operate the new facility. Staff recommends the purchase of the 2012 John Deere 210K tractor loader from Pape Machinery, of French Camp, in the amount of \$92,659, utilizing the California Multiple Award Schedule Contract No. 4-08-23-003A.

Per Lodi Municipal Code Section 3.20.045, State and Local Agency Contracts, the bidding process may be waived when it is advantageous for the City, with appropriate approval by City Manager and City Council, to use contracts that have been awarded by other California public agencies, provided that their award was in compliance with their formally-adopted bidding or negotiation procedures.

FISCAL IMPACT: Budgeted funds are available.

FUNDING AVAILABLE: Funds were budgeted in the Biosolids Dewatering Facility project account (172) for 2011/12.

Jordan Ayers
Deputy City Manager/Internal Services Director

F. Wally Sandelin
Public Works Director

Prepared by Larry Parlin, Deputy Public Works Director – Utilities
FWS/LP/pmf

APPROVED: _____
Konradt Bartlam, City Manager

RESOLUTION NO. 2012-_____

A RESOLUTION OF THE LODI CITY COUNCIL
APPROVING PURCHASE OF 2012 JOHN DEERE
210K TRACTOR LOADER

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WHEREAS, the newly-constructed biosolids dewatering facility at White Slough Water Pollution Control Facility requires use of a dedicated tractor loader to move dewatered biosolids for additional drying and to load biosolids into trucks for land application; and

WHEREAS, the new tractor loader will replace Vehicle No. 04-040, a 1994 John Deere 244E tractor loader that is retired from streets operations and not suitable for the requirements of the new biosolids dewatering facility operation; and

WHEREAS, staff recommends the purchase of the 2012 John Deere 210K tractor loader from Pape Machinery, of French Camp, in the amount of \$92,659, utilizing the California Multiple Award Schedule Contract No. 4-08-23-003A; and

WHEREAS, per Lodi Municipal Code Section 3.20.045, State and Local Agency Contracts, the bidding process may be waived when it is advantageous for the City, with appropriate approval by City Manager and City Council, to use contracts that have been awarded by other California public agencies, provided that their award was in compliance with their formally-adopted bidding or negotiation procedures.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve purchase of the 2012 John Deere 210K tractor loader from Pape Machinery, of French Camp, California, in the amount of \$92,659, utilizing the California Multiple Award Schedule Contract No. 4-08-23-003A.

Dated: April 18, 2012

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I hereby certify that Resolution No. 2012-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held April 18, 2012, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk



CITY OF LODI

COUNCIL COMMUNICATION

TM

AGENDA TITLE: Adopt Resolution Authorizing City Manager to Execute Contract for Roget Park Improvements, 2229 Tienda Drive, with Hemington Landscape Services, of Cameron Park (\$543,207.50) and Appropriating Funds (\$600,000)

MEETING DATE: April 18, 2012

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt resolution authorizing City Manager to execute contract for Roget Park Improvements, 2229 Tienda Drive, with Hemington Landscape Services, of Cameron Park, in the amount of \$543,207.50 and appropriating funds in the amount of \$600,000.

BACKGROUND INFORMATION: This project consists of developing four and one-half acres of park land. The existing land will be re-graded and landscaped to tie into the design concept of the proposed Eden Housing – Senior Housing Project adjacent to the park property. Park development work shall include the installation of new concrete walkways, bocce courts, horseshoe pits, game tables, security lighting, park benches, trash receptacles, par-course equipment, park sign, five-horsepower variable frequency drive irrigation booster pump, automatic irrigation system, hydro-seeded turf, native planting materials, underground utilities and other incidental and related work.

Specifications for this project were approved on December 21, 2011. The City received the following 14 bids for this project on April 4, 2012.

| Bidder | Location | Bid |
|------------------------------|----------------|---------------|
| Engineer's Estimate | | \$642,547.60 |
| Hemington Landscape Services | Cameron Park | \$543,207.50* |
| WABO Landscape | Hercules | \$543,852.00 |
| Stan Construction | San Bruno | \$547,366.75* |
| J.M. Slover | Placerville | \$568,197.14 |
| A.M. Stephens Construction | Lodi | \$598,312.90 |
| Saenz Landscape | Rancho Cordova | \$601,202.46* |
| Stockbridge | Clovis | \$613,767.90* |
| B.C Construction | Ceres | \$636,133.41* |
| Andrew L. Lee, Inc. | Lodi | \$662,571.00 |
| Dominguez Landscape | Sacramento | \$667,152.58* |
| Abide Builders | Vacaville | \$669,352.90 |
| Diede Construction | Woodbridge | \$684,783.30 |
| Vinciguerra Construction | Jackson | \$687,450.17* |
| Hobbs Construction | Fresno | \$696,889.10 |
| *Corrected Total | | |

APPROVED: _____
Konrad Bartlam, City Manager

Staff recommends the appropriation of \$600,000 for the construction contract, staff time and contingencies.

FISCAL IMPACT: There is no direct impact to the Parks and Recreation Department budget for the park development improvements at Roget Park. Funds being used are from the sale of the Tienda Drive property for the Senior Housing Project.

FUNDING AVAILABLE: Requested Appropriation:
General Fund Capital (1211): \$600,000

Jordan Ayers
Deputy City Manager/Internal Services Director

F. Wally Sandelin
Public Works Director

Jeff Hood
Interim Parks, Recreation & Cultural Services Director

FWS/pmf

CITY OF LODI, CALIFORNIA

THIS CONTRACT made by and between the CITY OF LODI, State of California, herein referred to as the "City," and HEMINGTON LANDSCAPE SERVICES, herein referred to as the "Contractor."

WITNESSETH:

That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other, as follows:

The complete Contract consists of the following documents which are incorporated herein by this reference, to-wit:

| | |
|------------------------|-------------------------------------|
| Notice Inviting Bids | The July 1992 Edition, |
| Information to Bidders | Standard Specifications, |
| General Provisions | State of California, |
| Special Provisions | Business and Transportation Agency, |
| Bid Proposal | Department of Transportation |
| Contract | |
| Contract Bonds | |
| Plans | |

All of the above documents, sometimes hereinafter referred to as the "Contract Documents," are intended to cooperate so that any work called for in one and not mentioned in the other is to be executed the same as if mentioned in all said documents.

ARTICLE I - That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the City and under the condition expressed in the two bonds bearing even date with these presents and hereunto annexed, the Contractor agrees with the City, at Contractor's cost and expense, to do all the work and furnish all the materials except such as are mentioned in the specifications to be furnished by the City, necessary to construct and complete in a good workmanlike and substantial manner and to the satisfaction of the City the proposed improvements as shown and described in the Contract Documents which are hereby made a part of the Contract.

ARTICLE II - The City hereby promises and agrees with the Contractor to employ, and does hereby employ, the Contractor to provide all materials and services not supplied by the City and to do the work according to the terms and conditions for the price herein, and hereby contracts to pay the same as set forth in Section 5.600, "Measurement, Acceptance and Payment," of the General Provisions, in the manner and upon the conditions above set forth; and the said parties for themselves, their heirs, executors, administrators, successors and assigns, do hereby agree to the full performance of the covenants herein contained.

ARTICLE III - The Contractor agrees to conform to the provisions of Chapter 1, Part 7, Division 2 of the Labor Code. The Contractor and any Subcontractor will pay the general prevailing wage rate and other employer payments for health and welfare, pension, vacation, travel time, and subsistence pay, apprenticeship or other training programs. The responsibility for compliance with these Labor Code requirements is on the prime contractor.

ARTICLE IV - And the Contractor agrees to receive and accept the following prices as full compensation for furnishing all materials and for doing all the work contemplated and embraced in this agreement; also for all loss or damage arising out of the nature of the work aforesaid or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its acceptance by the City, and for all risks of every description connected with the work; also for all expenses incurred by or in consequence of the suspension or discontinuance of work and for well and faithfully completing the work, and the whole thereof, in the manner and according to the Plans and Contract Documents and the requirements of the Engineer under them, to-wit:

The work consists of developing 4.5 acres of park land. The existing land must be regarded and landscaped. Work shall also include the installation of new concrete walkways, bocce courts, horseshoe pits, game tables, lighting, park benches, trash receptacles, par-course equipment, park sign, 5HP VFD irrigation booster pump, automatic irrigation system, hydro seeded turf, native planting materials, underground utilities and other incidental and related work, all as shown on the plans and specifications for "Roget Park Improvements, 2229 Tienda Drive".

CONTRACT ITEMS

| ITEM NO. | DESCRIPTION | UNIT | EST'D. QTY | UNIT PRICE | TOTAL PRICE |
|----------|---|------|------------|--------------|-------------|
| 1. | Clearing and Grubbing Tree Removal and Stump Grinding | LS | 1 | \$ 28,758.80 | \$28,758.80 |
| 2. | Dust Control | LS | 1 | \$ 3,981.00 | \$ 3,981.00 |
| 3. | Furnish, Install and Maintain Storm Water Pollution Prevention Plan | LS | 1 | \$ 10,976.00 | \$10,976.00 |
| 4. | Furnish and Maintain Temporary Chain Link Fencing | LF | 1,040 | \$ 2.50 | \$ 2,600.00 |
| 5. | Furnish and Install Temporary Project Sign | LS | 1 | \$ 700.00 | \$ 700.00 |
| 6. | Rough, Fine Grading and Compaction | SF | 196,020 | \$ 0.08 | \$15,681.60 |

| ITEM NO. | DESCRIPTION | UNIT | EST'D. QTY | UNIT PRICE | TOTAL PRICE |
|----------|--|------|------------|-------------|-------------|
| 7. | Furnish and Install New 4-Inch Water Gate Valve and Water Meter Box | LS | 1 | \$ 750.00 | \$ 750.00 |
| 8. | Furnish and Install 4-Inch Ductile Iron Water Line | LF | 80 | \$ 65.25 | \$ 5,220.00 |
| 9. | Furnish and Install 1-Inch Schedule 40 PVC Potable Water Line | LF | 175 | \$ 3.00 | \$ 525.00 |
| 10. | Furnish and Install 30-Inch Diameter x 12-Foot Deep Dry Well and Associated Plumbing | EA | 1 | \$ 950.00 | \$ 950.00 |
| 11. | Furnish and Install 4-Inch Backflow Device | EA | 1 | \$ 6,500.00 | \$ 6,500.00 |
| 12. | Furnish and Install Underground Primary Electrical | LS | 1 | \$ 5,205.60 | \$ 5,205.60 |
| 13. | Furnish and Install 200 Amp Metered Switchboard Panel and Pedestal Enclosure | LS | 1 | \$ 6,864.00 | \$ 6,864.00 |
| 14. | Furnish and Install Parking Lighting Conduit and Conductor | LF | 1,650 | \$ 8.62 | \$14,223.00 |
| 15. | Furnish and Install Electrical Pull Boxes | EA | 14 | \$ 298.10 | \$ 4,173.40 |
| 16. | Furnish and Install Decorative Park Lights with Concrete Foundations | EA | 11 | \$ 5,845.00 | \$64,295.00 |
| 17. | Furnish and Install Drop Inlet Catch Basin | EA | 1 | \$ 2,525.00 | \$ 2,525.00 |

| ITEM NO. | DESCRIPTION | UNIT | EST'D. QTY | UNIT PRICE | TOTAL PRICE |
|----------|--|------|------------|--------------|-------------|
| 18. | Furnish and Install 6-Foot Wide Concrete Walkways | LF | 1,660 | \$ 24.00 | \$39,840.00 |
| 19. | Furnish and Install Miscellaneous Concrete Flat Work | SF | 2,035 | \$ 5.00 | \$10,175.00 |
| 20. | Furnish and Install 2-Foot Wide Concrete Mow Strip | LF | 225 | \$ 13.00 | \$ 2,925.00 |
| 21. | Furnish and Install Concrete Pad with Macro Fiber and Saw Cut Joints | SF | 7,144 | \$ 5.00 | \$35,720.00 |
| 22. | Furnish and Install 12-Inch x 18-Inch Concrete Curbing for Bocce Court | LF | 324 | \$ 25.00 | \$ 8,100.00 |
| 23. | Furnish and Install Concrete Utility Enclosure Pad and Post Footings | LS | 1 | \$ 3,025.00 | \$ 3,025.00 |
| 24. | Furnish and Install 5 Horsepower Variable Frequency Drive (VFD) Irrigation Booster Pump and Electrical | EA | 1 | \$ 21,707.50 | \$21,707.50 |
| 25. | Furnish and Install Maxicom Irrigation Controls and Electrical | LS | 1 | \$ 15,661.70 | \$15,661.70 |
| 26. | Furnish and Install Automatic Irrigation System | SF | 181,310 | \$ 0.29 | \$52,579.90 |
| 27. | Furnish and Install Soil Amendments, Fertilizer and Soil Preparation | LBS | 4,500 | \$ 2.75 | \$12,375.00 |
| 28. | Furnish and Install Pre-Emergent Herbicide | LS | 1 | \$ 1,122.00 | \$ 1,122.00 |

| ITEM NO. | DESCRIPTION | UNIT | EST'D. QTY | UNIT PRICE | TOTAL PRICE |
|-------------|--|------|---------------|--------------|-------------|
| 29. | Furnish and Install Hydro Seeded 90/10 Turf Grass | SF | 48,300 | \$ 0.07 | \$ 3,381.00 |
| 30. | Furnish and Install Shrub and Ground Cover Plant Material | LS | 1 | \$ 14,700.00 | \$14,700.00 |
| 31. | Furnish and Install 15-Gallon Trees | EA | 82 | \$ 100.00 | \$ 8,200.00 |
| 32. | Furnish and Install Mulch Ground Cover | CY | 1,250 | \$ 37.00 | \$46,250.00 |
| 33. | Furnish and Install Bocce Court(s) Section Material | LS | 1 | \$ 8,470.00 | \$ 8,470.00 |
| 34. | Furnish and Install Horseshoe Pit(s) Metal Work and Backboards | LS | 1 | \$ 2,627.00 | \$ 2,627.00 |
| 35. | Furnish All Labor Plaster Sand for Horseshoe Pit(s) | BAGS | 24 | \$ 10.00 | \$ 240.00 |
| 36. | Furnish and Install Utility Enclosure with Custom Wood Fencing and Gate | LF | 82 | \$ 109.00 | \$ 8,938.00 |
| 37. | Furnish and Install 6-Foot Park Benches with Backs | EA | 5 | \$ 1,221.00 | \$ 6,105.00 |
| 38. | Furnish and Install 7-Foot Park Benches with Backs | EA | 8 | \$ 990.00 | \$ 7,920.00 |
| 39. | Furnish and Install Trash Receptacles | EA | 7 | \$ 1,232.00 | \$ 8,624.00 |
| 40. | Furnish and Install ADA Drinking Fountain with Concrete Pad and Plumbing | EA | 1 | \$ 4,818.00 | \$ 4,818.00 |

| ITEM NO. | DESCRIPTION | UNIT | EST'D. QTY | UNIT PRICE | TOTAL PRICE |
|----------|---|------|------------|--------------|--------------|
| 41. | Furnish and Install Precast Concrete Game Tables | EA | 6 | \$ 1,546.00 | \$ 9,276.00 |
| 42. | Furnish and Install Custom Natural Stone Park Sign with Concrete Foundations – Aluminum Lettering and Log | LS | 1 | \$ 11,753.00 | \$11,753.00 |
| 43. | Furnish and Install Par-Course Equipment | EA | 5 | \$ 3,322.00 | \$16,610.00 |
| 44. | Furnish All Labor, Materials and Equipment for 90-Day Maintenance Period | LS | 1 | \$ 8,136.00 | \$ 8,136.00 |
| TOTAL | | | | | \$543,207.50 |

ARTICLE V - By my signature hereunder, as Contractor, I certify that I am aware of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

ARTICLE VI - It is further expressly agreed by and between the parties hereto that, should there be any conflict between the terms of this instrument and the Bid Proposal of the Contractor, then this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

ARTICLE VII - The City is to furnish the necessary rights-of-way and easements and to establish lines and grades for the work as specified under the Special Provisions. All labor or materials not mentioned specifically as being done by the City will be supplied by the Contractor to accomplish the work as outlined in the specifications.

ARTICLE VIII - The Contractor agrees to commence work pursuant to this contract within 5 calendar days after the City Manager has executed the contract and to diligently prosecute to completion within **120 WORKING DAYS**.

WHEN SIGNING THIS CONTRACT, THE CONTRACTOR AGREES THAT THE TIME OF COMPLETION FOR THIS CONTRACT IS REASONABLE AND THE CONTRACTOR AGREES TO PAY THE CITY LIQUIDATED DAMAGES AS SET FORTH IN SECTION 6-04.03 OF THE SPECIAL PROVISIONS. CONTRACTOR AGREES THAT THIS AMOUNT MAY BE DEDUCTED FROM THE AMOUNT DUE THE CONTRACTOR UNDER THE CONTRACT.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands the year and date written below.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands the year and date written below.

CONTRACTOR: CITY OF LODI

By: _____
Konradt Bartlam
City Manager

By: _____ Date: _____

Title

Attest:

City Clerk

(CORPORATE SEAL) Approved As To Form

D. Stephen Schwabauer
City Attorney



1. AA# _____
2. JV# _____

| CITY OF LODI APPROPRIATION ADJUSTMENT REQUEST | | |
|--|---|---------------------|
| TO: | Internal Services Dept. - Budget Division | |
| 3. FROM: | Rebecca Areida-Yadav | 5. DATE: 02/28/2012 |
| 4. DEPARTMENT/DIVISION: Public Works | | |

| 6. REQUEST ADJUSTMENT OF APPROPRIATION AS LISTED BELOW | | | | | |
|--|--------|-------------|-----------|-------------------------|---------------|
| | FUND # | BUS. UNIT # | ACCOUNT # | ACCOUNT TITLE | AMOUNT |
| A. SOURCE OF FINANCING | | | | | |
| | 1211 | | 3205 | Unreserved Fund Balance | \$ 600,000.00 |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| B. USE OF FINANCING | | | | | |
| | 1211 | 1211042 | 1825.2400 | Roget Park | \$ 600,000.00 |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

| 7. REQUEST IS MADE TO FUND THE FOLLOWING PROJECT NOT INCLUDED IN THE CURRENT BUDGET |
|--|
| <p>Please provide a description of the project, the total cost of the project, as well as justification for the requested adjustment. If you need more space, use an additional sheet and attach to this form.</p> <p>Award contract for Roget Park Improvements project. Funds being used for this project are coming from the sale of Tienda Drive (senior housing project). Revenue from the sale were received last fiscal year.</p> |
| <p>If Council has authorized the appropriation adjustment, complete the following:</p> <p>Meeting Date: _____ Res No: _____ Attach copy of resolution to this form.</p> <p>Department Head Signature: <u>Wesley Sandoz</u></p> |

| 8. APPROVAL SIGNATURES | |
|---|------|
| | |
| Deputy City Manager/Internal Services Manager | Date |

Submit completed form to the Budget Division with any required documentation.
Final approval will be provided in electronic copy format.

RESOLUTION NO. 2012-_____

A RESOLUTION OF THE LODI CITY COUNCIL AWARDING
CONTRACT AND AUTHORIZING THE CITY MANAGER TO
EXECUTE CONTRACT FOR ROGET PARK IMPROVEMENTS,
2229 TIENDA DRIVE, AND FURTHER APPROPRIATING FUNDS

=====

WHEREAS, in answer to notice duly published in accordance with law and the order of this City Council, sealed bids were received and publicly opened on April 4, 2012, at 11:00 a.m., for Roget Park Improvements, 2229 Tienda Drive, described in the plans and specifications therefore approved by the City Council on December 21, 2011; and

WHEREAS, said bids have been checked and tabulated and a report thereof filed with the City Manager as follows:

| Bidder | Bid |
|------------------------------|----------------|
| Hemington Landscape Services | \$ 543,207.50* |
| WABO Landscape | \$ 543,852.00 |
| Stan Construction | \$ 547,366.75* |
| J.M. Slover | \$ 568,197.14 |
| A.M. Stephens Construction | \$ 598,312.90 |
| Saenz Landscape | \$ 601,202.46* |
| Stockbridge | \$ 613,767.90* |
| B.C Construction | \$ 636,133.41* |
| Andrew L. Lee, Inc. | \$ 662,571.00 |
| Dominguez Landscape | \$ 667,152.58* |
| Abide Builders | \$ 669,352.90 |
| Diede Construction | \$ 684,783.30 |
| Vinciguerra Construction | \$ 687,450.17* |
| Hobbs Construction | \$ 696,889.10 |

*Corrected Total

WHEREAS, staff recommends awarding the contract for Roget Park Improvements, 2229 Tienda Drive, to the low bidder, Hemington Landscape Services, of Cameron Park, California, in the amount of \$543,207.50; and

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby award the contract for Roget Park Improvements, 2229 Tienda Drive, to the low bidder, Hemington Landscape Services, of Cameron Park, California, in the amount of \$543,207.50; and

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute the contract; and

BE IT FURTHER RESOLVED that funds in the amount of \$600,000 be appropriated from General Fund Capital for this project.

Dated: April 18, 2012

=====

I hereby certify that Resolution No. 2012-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held April 18, 2012, by the following vote:

AYES: COUNCIL MEMBERS –
NOES: COUNCIL MEMBERS –
ABSENT: COUNCIL MEMBERS –
ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

2012-_____



CITY OF LODI COUNCIL COMMUNICATION

TM

AGENDA TITLE: Adopt Resolution Authorizing City Manager to Execute Contract and Contract Extensions for Fixed Route, ADA Paratransit, and Demand Response Operations for Fiscal Years 2012/13 to 2014/15 with MV Transportation Inc., of Fairfield (\$1,682,365 for Fiscal Year 2012/13)

MEETING DATE: April 18, 2012

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt resolution authorizing City Manager to execute contract and contract extensions for fixed route, ADA paratransit, and demand response operations for Fiscal Years 2012/13 to 2014/15 with MV Transportation, Inc., of Fairfield, in the amount of \$1,682,365 for Fiscal Year 2012/13.

BACKGROUND INFORMATION: On June 18, 2008, City Council awarded the Transit Operations contract to MV Transportation, Inc., for a four-year term through 2011/12 with two one-year extensions. In October 2009, due to reduced State funding, City Council approved reduced transit service hours and hours of operations. With the service hour reduction, the contract price was renegotiated. The four-year contract ends June 30, 2012. To receive a more competitive price, City staff felt it would be advantageous to solicit proposals and not exercise the one-year extensions.

Request for Proposals (RFP) for the Transit Operations contract were released on February 1, 2012, with a March 12, 2012 submittal deadline. City staff solicited RFPs by advertising in two newspapers for three days and distributing notifications by mail to several transit contractors. The City held a non-mandatory pre-proposal conference on February 15, which was attended by six potential proposers. City staff presented a summary of requested services and the contractor's responsibilities. All written questions and comments were due February 22, 2012. Staff responded to the written questions via an addendum. Three proposals were received (Bauer Intelligent Transportation, MV Transportation, Inc., and Storer Transit Systems) and found to be responsive.

The proposals were distributed to an evaluation panel for review and were scored based on the evaluation factors provided in Attachment 1. The factors included Organization/Management (30%), Financial (35%), and Technical (35%). The evaluation panel included the City's Transportation Manager and Transit Managers from City of Manteca and City of Tracy. All three firms were interviewed, and the two top firms were requested to provide their Best and Final Offer (BAFO) by March 26, 2012. The BAFOs from the two firms were distributed to the evaluation panel for review, and the panel again scored the firms using the same evaluation factors.

The evaluation panel unanimously scored MV Transportation's proposal as the most advantageous to the City based on the evaluation factors. MV Transportation's proposal presented the lowest cost, proposed to continue with the same General Manager and Safety and Training Manager, retained all current staff (subject to City's background check), and included all required elements of the RFP. The City Council shall have the discretion to: 1) award the Agreement to the Proposer whose proposal is most advantageous to

APPROVED: _____
Konradt Bartlam, City Manager

Adopt Resolution Authorizing City Manager to Execute Contract and Contract Extensions for Fixed Route, ADA Paratransit, and Demand Response Operations for Fiscal Years 2012/13 to 2014/15 with MV Transportation Inc., of Fairfield (\$1,682,365 for Fiscal Year 2012/13)

April 18, 2012

Page 2

the City, or 2) reject any and all proposals. The Council is not bound by the recommendation of the evaluation panel.

A summary of the two BAFOs is provided below:

Best and Final Offer

| | Year 1 | Year 2 | Year 3 | Total |
|--------|---------------|---------------|---------------|--------------|
| Storer | \$1,792,271 | \$1,837,078 | \$1,883,005 | \$5,512,354 |
| MV | \$1,682,365 | \$1,740,691 | \$1,787,597 | \$5,210,653 |
| | | | Difference | \$301,701 |

Attachment 2 provides MV Transportation's proposed hourly and fixed monthly costs for the three-year term beginning July 1, 2012 and ending June 30, 2015. Similar to other City franchised contracts, pricing for each of two one-year options is adjusted by a percentage amount equal to eighty percent (80%) of the annual change in the Consumer Price Index (CPI) for all Urban Consumers for San Francisco-Oakland-San Jose, California area. All items (1982-84=100) published by the U.S. Department of Labor, Bureau of Labor Statistics for the 12-month period ending December 31 of the preceding calendar year.

MV Transportation provided the City with a letter from the labor union representing the drivers, noting their support of the contract renewal with MV Transportation.

FISCAL IMPACT: The proposed contract provides more annual operating hours at a better price per hour than the current contract. There is an estimated savings of \$200,000 per year over the present contract.

FUNDING AVAILABLE: Funds for this contract are from Transportation Development Act (TDA) and Federal Transit Administration (FTA) funds and have been included in the Fiscal Year 2012/13 Transit Operations (1250) budget.

Jordan Ayers
Deputy City Manager/Internal Services Director

F. Wally Sandelin
Public Works Director

Prepared by Paula Fernandez, Transportation Manager/Senior Traffic Engineer
FWS/PJF/pmf
Attachments

cc: Transportation Manager
Fleet Services Supervisor
MV Transportation, Inc. (Mr. Pihl, Mr. Stewman, Mr. Kohlhepp)

PROPOSAL EVALUATION CRITERIA

Responsive proposals will be evaluated in accordance with the following criteria. Category A will each receive thirty percent of the total value, and Categories B and C will be assigned thirty-five percent.

CATEGORY A: ORGANIZATION AND MANAGEMENT (30%)

1. Demonstrated public transit management and operations capabilities and performance.
2. Qualifications and experience of the proposed General Manager, Safety Manager and other personnel.
3. Commitment and approach to maximizing the safety, quality and efficiency of public transit operations.
4. Demonstrated understanding and commitment to equitable labor management practices, Equal Employment Opportunity, and non-discrimination in the selection of subcontractors and in the provision of public transit services.
5. References.

CATEGORY B: FINANCIAL (35%)

1. Financial stability of proposer.
2. Reasonableness of proposed monthly and hourly rates, and allocation of contract resources.

CATEGORY C: TECHNICAL (35%)

1. Demonstrated understanding of requirements.
2. Assessment of submitted programs and plans; equipment provided for computer aided dispatch system, vehicle locating and tracking system, system reservations and dispatch plan, and telephone system.
3. Demonstrated knowledge and experience related to the operation of technical equipment such as automated fareboxes and cameras, vehicle locating/tracking systems and computer aided dispatch system; and experience with use of Compressed Natural Gas (CNG) fueling.
4. Availability of quality technical resources and personnel to assure equipment provided by Contractor is properly maintained and fully utilized to provide required reporting information.

PROPOSAL FORM, Page 1

| |
|--|
| Section VII: CITY PROPOSAL FORM |
|--|

This PROPOSAL FORM is to be used to submit the PROPOSER'S firm fixed price proposal for all work described in the DRAFT AGREEMENT and EXHIBIT "A" - SCOPE OF WORK.

The PROPOSER'S price proposal must consist of fixed hourly rates by mode of service, fixed cost per mile, and fixed monthly rates, all in accordance with Section 9.1 - Price Formula, of the DRAFT AGREEMENT. Such rates shall be proposed for each of the three years contemplated in this RFP, and shall be based on the levels of service, in terms of vehicle revenue hours (VRH) for Dial-A-Ride/VineLine and fixed route services, as stated below. In the event CITY exercises any option year(s) allowed under this AGREEMENT, rates shall be adjusted for each option year in a percentage amount equal to eighty percent (80%) of the annual change in the Consumer Price Index (CPI) for all Urban Consumers for San Francisco-Oakland-San Jose, California area. All items (1982-84=100) published by the US Department of Labor, Bureau of Labor Statistics (the Index) for the twelve (12) month period ending December 31 of the preceding calendar year. The detailed Budget Breakdown on pages 2 and 3 of the PROPOSAL FORM should be consistent with the rates proposed. Refer to Vehicle Revenue Hour definition on page 2 of this PROPOSAL FORM.

| PRICE PROPOSAL | YEAR 1 | YEAR 2 | YEAR 3 |
|--|------------------|------------------|------------------|
| LEVEL OF SERVICE | 7/1/12 - 6/30/13 | 7/1/13 - 6/30/14 | 7/1/14 - 6/30/15 |
| Dial-A-Ride/ ADA Paratransit Vehicle Revenue Hours | 15,000 \pm 15% | 15,000 \pm 15% | 15,000 \pm 15% |
| Fixed Route Vehicle Revenue Hours | 18,000 \pm 15% | 18,000 \pm 15% | 18,000 \pm 15% |
| Total Vehicle Revenue Hours | 33,000 \pm 15% | 33,000 \pm 15% | 33,000 \pm 15% |

| PRICE FORMULA | | | |
|---|-----------|-----------|-----------|
| Cost/ Vehicle Revenue Hour (Total Cost from Proposal Form, Page 2 divided by Total VRH) | 35.131 | 36.244 | 37.230 |
| Monthly Fixed Expense (Provide a detailed listing all fixed costs using Proposal Form, Page 3) | 43,586.79 | 45,386.41 | 46,584.02 |

| TOTAL ANNUAL COSTS BASED ON FIGURES ABOVE | 7/1/12 - 6/30/13 | 7/1/13 - 6/30/14 | 7/1/14 - 6/30/15 |
|---|------------------|------------------|------------------|
| Total CITY Cost/ Vehicle Revenue Hour | 1,159,323 | 1,196,054 | 1,228,589 |
| Total Monthly Fixed Expense | 523,041 | 544,637 | 559,008 |
| TOTAL ANNUAL COST | 1,682,365 | 1,740,691 | 1,787,597 |

BUDGET BREAKDOWN

| PRICE PROPOSAL | YEAR 1 | YEAR 2 | YEAR 3 |
|----------------|--------|--------|--------|
|----------------|--------|--------|--------|

| VEHICLE REVENUE HOURLY COST ELEMENTS (ANNUAL) | 7/1/12 - 6/30/13 | 7/1/13 - 6/30/14 | 7/1/14 - 6/30/15 |
|---|------------------|------------------|------------------|
| Driver Wages | 751,708 | 773,753 | 788,868 |
| Driver Fringe Benefits | 266,720 | 277,435 | 289,704 |
| Scheduler/Dispatch Wages | 94,948 | 96,847 | 98,784 |
| Scheduler/Dispatch Benefits | 35,621 | 37,410 | 40,328 |
| Uniform | 3,060 | 3,132 | 3,216 |
| Hiring/ Training | 7,267 | 7,476 | 7,687 |
| TOTAL (ANNUAL) | 1,159,323 | 1,196,054 | 1,228,589 |

Vehicle Revenue Hourly Cost Elements refers to combined cost for fixed-route, ADA paratransit and demand response services and items listed above.

Vehicle Revenue Hour definition:

Fixed-Route

Vehicle Revenue Hours will be calculated based on the actual time that each revenue vehicle is in service and available to passengers. This means from the first scheduled pick up time point to the last scheduled time point. For fixed route services, Vehicle Revenue Hours are defined as the scheduled hours of service, set forth in the current "GrapeLine Fixed Route Maps and Bus Schedules" as shown in Exhibit C, or any revisions thereto, plus or minus adjustments for schedule deviations, trippers, or other service level changes as specifically authorized by the CITY under Article 6 of the DRAFT AGREEMENT. See Attachment 11 for current Express route deadhead.

ADA paratransit/Demand Response

For Dial-A-Ride and VineLine ADA paratransit service, Vehicle Revenue Hours are defined as the time from when a vehicle makes its first pick up through the time of its last drop off, regardless of whether the first pick-up is a no-show. "No-show" is defined when a passenger reserves a ride but does not meet the vehicle at the scheduled time and in accordance with CITY'S DAR/VL Rider's Guide.

For all transit services, Vehicle Revenue Hours shall specifically exclude deadhead hours, including time for travel to and from storage facilities, changing routes, downtime for road calls, road tests, fueling, vehicle inspections, driver training, and driver lunches and rest breaks but shall include layover time.

| PRICE PROPOSAL | YEAR 1 | YEAR 2 | YEAR 3 |
|---|-------------------------|-------------------------|-------------------------|
| MONTHLY FIXED COST ELEMENTS (ANNUAL) | 7/1/12 - 6/30/13 | 7/1/13 - 6/30/14 | 7/1/14 - 6/30/15 |
| Management Wages | 101,576 | 103,608 | 105,680 |
| Management Benefits | 29,719 | 28,454 | 29,322 |
| Administrative Wages | 54,972 | 56,072 | 57,192 |
| Administrative Benefits | 19,114 | 20,077 | 21,651 |
| Office Expense & Supplies | 5,370 | 5,508 | 5,646 |
| Insurance. | 44,973 | 45,498 | 46,026 |
| Marketing | 6,000 | 6,150 | 6,304 |
| Insurance Deductible/Expense | 5,516 | 5,516 | 5,516 |
| Performance Bond | 3,125 | 3,125 | 3,125 |
| Communications | 7,290 | 7,476 | 7,662 |
| Profit | 42,059 | 52,221 | 53,628 |
| Safety | 6,494 | 6,631 | 6,779 |
| Other/ Equipment | 145,021 | 151,130 | 155,827 |
| Maintenance Supplies | 2,760 | 2,832 | 2,904 |
| Start-Up | - | - | - |
| Utility Expenses | 22,529 | 23,249 | 24,257 |
| Other (Specify) | 26,523 | 27,089 | 27,489 |
| | | | |
| TOTAL (ANNUAL) | 523,041 | 544,637 | 559,008 |

PROPOSER shall provide itemized budget detail for each line item shown above.

Itemized Budget Detail for Hourly Expense

| | FY 2012/13 | FY 2013/14 | FY 2014/15 |
|------------------------------|------------|------------|------------|
| Driver Wages | | | |
| Revenue Wages | 743,820 | 765,640 | 780,592 |
| New Hire Training Wages | 2,173 | 2,226 | 2,271 |
| Retraining & Safety Meetings | 5,715 | 5,886 | 6,005 |
| | | | |

| | | | |
|--------------------------|--------|--------|--------|
| Driver Benefits | | | |
| Vacation | 18,465 | 19,026 | 19,410 |
| Holiday | 33,782 | 34,961 | 35,667 |
| PTO | 13,697 | 14,175 | 14,462 |
| Medical/Dental Insurance | 60,624 | 65,368 | 73,704 |
| Life Insurance | 240 | 252 | 264 |
| 401(k) | 115 | 118 | 120 |
| Payroll Taxes | 76,347 | 78,203 | 79,465 |
| Workers' Compensation | 63,450 | 65,333 | 66,612 |
| | | | |

| | | | |
|-------------------------|--------|--------|--------|
| Sched/Disp Wages | | | |
| Lead Dispatcher | 40,642 | 41,455 | 42,284 |
| Dispatchers | 54,306 | 55,393 | 56,501 |
| | | | |

| | | | |
|----------------------------|--------|--------|--------|
| Sched/Disp Benefits | | | |
| Vacation | 2,721 | 2,775 | 2,830 |
| Holiday | 1,632 | 1,665 | 1,698 |
| PTO | | | |
| Medical/Dental Insurance | 18,945 | 20,428 | 23,033 |
| Life Insurance | 48 | 50 | 53 |
| 401(k) | 36 | 37 | 38 |
| Payroll Taxes | 9,002 | 9,154 | 9,309 |
| Workers' Compensation | 3,237 | 3,302 | 3,368 |
| | | | |

PROPOSAL FORM, Page 4
(Cont'd)

| | | | |
|----------------|-------|-------|-------|
| Uniform | 3,060 | 3,132 | 3,216 |
|----------------|-------|-------|-------|

Hiring/Training Expenses

| | | | |
|-------------------|-------|-------|-------|
| Recruiting | 1,433 | 1,474 | 1,516 |
| Background Checks | 3,825 | 3,927 | 4,029 |
| Physicals | 2,009 | 2,075 | 2,142 |
| | | | |

Other (Specify)

| | | | |
|--|--|--|--|
| | | | |
|--|--|--|--|

Total Hourly Expenses

| | | |
|-----------|-----------|-----------|
| 1,159,323 | 1,196,054 | 1,228,589 |
|-----------|-----------|-----------|

**Itemized Budget Detail for Monthly
Fixed Expense**

| | FY 2012/13 | FY 2013/14 | FY 2014/15 |
|--------------------------------|------------|------------|------------|
| Management Wages | | | |
| Operations Manager | 59,595 | 60,787 | 62,002 |
| Safety&Training Manager | 41,981 | 42,821 | 43,678 |
| | | | |
| Management Benefits | | | |
| Vacation | 2,910 | 2,969 | 3,028 |
| Holiday | 1,746 | 1,781 | 1,817 |
| PTO | - | - | - |
| Medical/Dental Insurance | 12,260 | 10,668 | 11,201 |
| Life Insurance | 38 | 40 | 42 |
| 401(k) | 49 | 50 | 51 |
| Payroll Taxes | 9,251 | 9,414 | 9,579 |
| Workers' Compensation | 3,463 | 3,532 | 3,603 |
| | | | |
| Administrative Wages | | | |
| Road Supervisors | 14,034 | 14,315 | 14,601 |
| Accounting Manager | | | |
| Vault Clerk | | | |
| BTW Trainers | | | |
| Farebox Clerk | | | |
| Shuttle Inv Clerk | | | |
| Transit Store | 40,938 | 41,757 | 42,591 |
| | | | |
| Administrative Benefits | | | |
| Vacation | 1,173 | 1,196 | 1,220 |
| Holiday | 704 | 718 | 732 |
| PTO | | | |
| Medical/Dental Insurance | 10,230 | 11,031 | 12,438 |
| Life Insurance | 26 | 27 | 29 |
| 401(k) | 19 | 20 | 20 |
| Payroll Taxes | 5,108 | 5,195 | 5,283 |
| Workers' Compensation | 1,853 | 1,890 | 1,928 |
| | | | |

Office Expenses & Supplies

| | | | |
|-----------------------|-------|-------|-------|
| Copier Toner & Paper | 3,000 | 3,072 | 3,144 |
| Postage | 240 | 252 | 264 |
| DSL Service | 2,130 | 2,184 | 2,238 |
| Misc. Office Supplies | | | |
| | | | |

Insurance

| | | | |
|-------------------------------|--------|--------|--------|
| General Liability | 841 | 870 | 894 |
| Automobile Liability | 44,132 | 44,628 | 45,132 |
| Fidelity Bond/Crime Insurance | - | - | - |

Marketing

| | | |
|-------|-------|-------|
| 6,000 | 6,150 | 6,304 |
|-------|-------|-------|

Insurance Deductible/Expense

| | | |
|-------|-------|-------|
| 5,516 | 5,516 | 5,516 |
|-------|-------|-------|

Performance bond

| | | |
|-------|-------|-------|
| 3,125 | 3,125 | 3,125 |
|-------|-------|-------|

Communications

| | | | |
|-------------|-------|-------|-------|
| Cell Phone | 900 | 924 | 948 |
| Radio Usage | | | |
| Telephone | 6,390 | 6,552 | 6,714 |
| | | | |

Profit

| | | |
|--------|--------|--------|
| 42,059 | 52,221 | 53,628 |
|--------|--------|--------|

Safety

| | | | |
|---------------------------|-------|-------|-------|
| Pull Notice Program | 301 | 301 | 301 |
| Safety & Training Program | 4,832 | 4,939 | 5,049 |
| Drug & Alcohol Program | 1,361 | 1,391 | 1,429 |
| | | | |

Other/Equipment

| | | | |
|-------------------------|--------|--------|--------|
| Trapeze Maint. Fees | 49,200 | 50,436 | 51,696 |
| Business License | | | |
| Depreciation- DriveCam | 1,224 | 3,072 | 4,116 |
| Depreciation- Trapeze | | | |
| Depreciation- Computers | 1,335 | 1,152 | 965 |

Depreciation-
CoinCounter
Depreciation-
PhoneUpgrade
Overhead

| | | |
|--------|--------|--------|
| 732 | 732 | 732 |
| | | |
| 92,530 | 95,738 | 98,318 |
| | | |

Maintenance Supplies

VehicleCleaning
Supplies
FacilityCleaning
Supplies
Facility Supplies
Other

| | | |
|-------|-------|-------|
| 690 | 708 | 726 |
| 828 | 850 | 871 |
| 1,242 | 1,274 | 1,307 |
| | | |
| | | |
| | | |

Other Utility Expenses

Utility Supervisor
Utility Workers
Vacation
Holiday
PTO
Medical/Dental
Insurance
Life Insurance
401(k)
Payroll Taxes
Workers' Compensation

| | | |
|--------|--------|--------|
| | | |
| 15,361 | 15,668 | 15,982 |
| | | |
| | | |
| | | |
| 4,736 | 5,107 | 5,758 |
| 12 | 13 | 13 |
| 9 | 9 | 9 |
| 1,526 | 1,550 | 1,574 |
| 885 | 902 | 921 |

Start Up

| | | |
|---|---|---|
| - | - | - |
|---|---|---|

Other (Specify)**Armored Car Service****TimePoint/IVR Costs****Interest Expense**

| | | |
|--------|--------|--------|
| | | |
| 4,644 | 4,764 | 4,884 |
| 13,834 | 14,184 | 14,537 |
| 8,045 | 8,141 | 8,068 |

Total Fixed Expense

| | | |
|---------|---------|---------|
| 523,041 | 544,637 | 559,008 |
|---------|---------|---------|

PROPOSAL FORM, Page 6

| Staffing Levels & Wages/ Salaries (Full-Time) Fixed Route, ADA Paratransit & Demand Response | YEAR 1 | | YEAR 2 | | YEAR 3 | |
|---|--------------------------------|-------|--------------------------------|-------|--------------------------------|-------|
| <p>CONTRACTOR Definition of full-time Employee__</p> <p>___A full time employee is one that works an average of more than 35 hours a week.</p> <p>_____</p> <p>_____</p> <p>_____</p> | | | | | | |
| Full-Time Employees | FY 2012/13 7/1/12 - 6/30/13 | | FY 2013/14 7/1/13 - 6/30/14 | | FY 2014/15 7/1/14 - 6/30/15 | |
| Job Classifications | No. | Scale | No. | Scale | No. | Scale |
| Drivers | 6 | 17.59 | 6 | 18.03 | 6 | 18.39 |
| Drivers | 2 | 18.74 | 2 | 19.11 | 2 | 19.49 |
| Drivers | | | | | | |
| Drivers | | | | | | |
| Drivers | | | | | | |
| Drivers | | | | | | |
| Dispatchers/Supervisors | 1 | 18.37 | 1 | 18.74 | 1 | 19.11 |
| Operations Manager | 1 | 29.96 | 1 | 30.56 | 1 | 31.18 |
| Office/Clerical Staff | 1 | 18.50 | 1 | 18.87 | 1 | 19.25 |
| Trainers | 1 | 21.11 | 1 | 21.53 | 1 | 21.96 |
| Utility Staff | | | | | | |
| Off-Site Personnel | | | | | | |
| <p>Please list all benefits a full-time employee will be eligible to receive based on the terms of your price proposal. Include the time frame at which an employee is eligible to receive such benefits.</p> <p>___Vacation: varies by seniority with average of 130 vacation hours per FT Driver, 3 month probation.</p> <p>Holiday: 10 days for both FT/POT drivers – begins accruing immediately; staff gets 6 paid Holidays.</p> <p>PTO Days: Drivers average 13 days; Staff PTO is part of their wage calculation.</p> <p>Medical/Dental/Life/401K Benefits are as outlined in the Proposal.</p> <p>_____</p> <p>_____</p> | | | | | | |
| | FY 2012/13 | | FY 2013/14 | | FY 2014/15 | |
| FTE for full-time employees: | 12 | | 12 | | 12 | |
| <p>*Please explain and justify any off-site personnel included in the price proposal.</p> <p>Definitions: Full-Time Equivalent (FTE) is calculated by dividing the total number of person hours by 2,080. "Wage Scale" should either be the hourly wage or monthly salary. In the case of drivers, please indicate the number of drivers at differing hourly wage rates.</p> | | | | | | |

| Staffing Levels & Wages/Salaries (Part-Time) Fixed Route, ADA Paratransit & Demand Response | YEAR 1 | YEAR 2 | YEAR 3 |
|--|--------|--------|--------|
|--|--------|--------|--------|

CONTRACTOR Definition of **part-time** Employee _____
A part time employee is one that works an average of less than 35 hours a week.

| Part-Time Employees | FY 2012/13 7/1/12 - 6/30/13 | | FY 2013/14 7/1/13 - 6/30/14 | | FY 2014/15 7/1/14 - 6/30/15 | |
|-------------------------|--------------------------------|-------|--------------------------------|-------|--------------------------------|-------|
| Job Classifications | No. | Scale | No. | Scale | No. | Scale |
| Drivers | 3 | 15.62 | 3 | 16.01 | 3 | 16.33 |
| Drivers | 1 | 16.11 | 1 | 16.51 | 1 | 16.84 |
| Drivers | 1 | 16.61 | 1 | 17.02 | 1 | 17.36 |
| Drivers | 1 | 17.10 | 1 | 17.52 | 1 | 17.87 |
| Drivers | 13 | 17.59 | 13 | 18.03 | 13 | 18.39 |
| Drivers | | | | | | |
| Dispatchers/Supervisors | 3 | 16.36 | 3 | 16.69 | 3 | 17.02 |
| Operations Manager | | | | | | |
| Office/Clerical Staff | | | | | | |
| Trainers | 1 | 17.33 | 1 | 17.67 | 1 | 18.03 |
| Utility Staff | 1 | 10.62 | 1 | 10.83 | 1 | 11.05 |
| Off-Site Personnel | | | | | | |

Please list all benefits a **part-time** employee will be eligible to receive based on the terms of your price proposal. Include the time frame at which an employee is eligible to receive such benefits.

Vacation: PT drivers are not eligible. Holiday: 10 days for both PT/FT Drivers – begins accruing immediately; staff gets 6 paid Holidays. PTO Days: PT Drivers are not eligible and PT staff is covered as part of their wage calculation. Medical/Dental/Life/401K Benefits are as outlined in the Proposal.

| | FY 2012/13 | FY 2013/14 | FY 2014/15 |
|-----------------------------|------------|------------|------------|
| No. of part-time employees: | 24 | 24 | 24 |

*Please explain and justify any off-site personnel included in the price proposal.
Definitions: "Wage Scale" should either be the hourly wage or monthly salary. In the case of drivers, please indicate the number of drivers at differing hourly wage rates.

ATTACHED TO THIS PROPOSAL FORM ARE THE FOLLOWING ITEMS:

1. Any and all Addenda which may have been issued by CITY in connection with this RFP
2. Performance Security Requirement
3. RFP Forms A and B – Non-Collusion Affidavit; Eligible Bidder Certification; Proposer's Bond Form
4. Statement of Qualifications
5. Experience/References
6. Organization Description
7. Proposed Staffing Plan (including salary & benefit schedules, resumes)
8. Description of Management and Personnel Policies
9. Description of Accounting and Reporting System
10. Description of Insurance (including statement of loss experience and pending claims)
11. Financial Statement
12. Technical Requirement/ Contractor Furnished Equipment
13. Description of Safety Program
14. Description of Screening and Selection Program
15. Description of Training and Retraining Program
16. Time Schedule for Start-up/Transition

Proposer: _____ Phone: _____

Address: _____

Signature: _____ Date: _____

AGREEMENT

BETWEEN

CITY AND MV TRANSPORTATION, INC.

This AGREEMENT is entered into in the City of Lodi, County of San Joaquin, State of California, this ____ day of _____, 2012 ("Effective Date") by and between the City of Lodi, a municipal corporation, hereinafter referred to as "CITY" and MV Transportation, Inc., of Fairfield, California, hereinafter referred to as "CONTRACTOR" (collectively the "PARTIES").

WITNESSETH

WHEREAS, CITY has determined that it requires operational services for its public transit system, and

WHEREAS, CONTRACTOR has represented that it has the necessary expertise and personnel and is qualified to perform such services;

NOW, THEREFORE, it is mutually understood and agreed as follows:

ARTICLE 1 - COMPLETE AGREEMENT

This AGREEMENT and the attachments and documents incorporated herein constitute the complete and exclusive statement of the terms of the AGREEMENT between CITY and CONTRACTOR and it supersedes all prior representations, understanding and communications. The invalidity in whole or in part of any provision of this AGREEMENT shall not affect the validity of other provisions. CITY'S failure to insist in one or more instances upon the performance of any term or terms of this AGREEMENT shall not be construed as a waiver or relinquishment of CITY'S right to such performance by CONTRACTOR. In the event of a conflict between the various documents comprising this AGREEMENT, the document with a later date shall prevail over a document with an earlier date.

ARTICLE 2` - HIRING OF THE CONTRACTOR

CITY hereby engages CONTRACTOR and CONTRACTOR agrees to perform the services, hereinafter described, in connection with the operation of CITY'S GrapeLine Fixed route, VineLine ADA complementary paratransit, and GrapeLine demand response/Dial A Ride services.

ARTICLE 3 - INDEPENDENT CONTRACTOR

CONTRACTOR'S relationship to CITY in its performance of this AGREEMENT is that of an independent contractor. CONTRACTOR agrees that it is not and will not become an employee, partner, agent, or principal of CITY while this AGREEMENT is in effect. CONTRACTOR may, at CONTRACTOR's own expense, use employees or subcontractors as CONTRACTOR deems necessary to perform the services required by CONTRACTOR under this AGREEMENT. The personnel performing services under this AGREEMENT shall at all times be under

CONTRACTOR'S exclusive direction and control and shall be employees of CONTRACTOR and not employees of CITY. CITY shall not control, direct or supervise CONTRACTOR's employees or subcontractors in the performance of those services.

CONTRACTOR shall pay all wages, salaries, and other amounts due its employees in connection with the performance of this AGREEMENT and shall be responsible for all reports and obligations respecting them, such as social security, income tax withholding, unemployment compensation, workers compensation insurance, and similar matters. The personnel performing services under this AGREEMENT shall not be entitled to the rights or benefits afforded to CITY employees, including disability or unemployment insurance, workers' compensation, medical insurance, sick leave, or any other CITY employment benefit. CONTRACTOR shall provide its employees with written notice that any and all obligations in connection with their employment are obligations of CONTRACTOR and not CITY.

The relationship between CITY and CONTRACTOR is non-exclusive. CONTRACTOR may perform services for, and contract with as many other clients, persons, or companies as CONTRACTOR, in its sole discretion, sees fit.

ARTICLE 4 - SCOPE OF WORK

CONTRACTOR will provide the services to be rendered as set forth in the Request for Proposals issued by CITY on February 1, 2012, as amended by any addenda, which is attached hereto as (Exhibit A – Scope of Work) and is hereby incorporated by this reference, as supplemented or modified by CONTRACTOR'S Operations Service Proposal, which is attached hereto as Exhibit H and is hereby incorporated by this reference.

ARTICLE 5 - CHANGES IN SCOPE OF WORK

It is understood and agreed by CITY and CONTRACTOR that it may be necessary, from time to time during the term of this AGREEMENT, to modify its provisions or to revise the scope and/or extent of CONTRACTOR'S work under this AGREEMENT for CITY transit operations. In each such instance, CITY and CONTRACTOR shall consult with each other and shall come to a mutually acceptable AGREEMENT as to the nature of the required modification or revision desired. Each AGREEMENT to modify or revise the scope and/or extent of CONTRACTOR'S work shall be reduced to writing, and when fully executed by both parties, shall constitute an amendment to this AGREEMENT. Each amendment will be identified and sequentially numbered as "Amendment No. 1," "Amendment No. 2," and so forth, and shall be subject to all of the other applicable provisions of this AGREEMENT. Until an amendment has been approved by CITY in the foregoing manner, it shall have no force or effect.

Notwithstanding the above, CITY without invalidating this AGREEMENT may from time to time order minor changes in the scope and/or extent of CONTRACTOR'S work involving CITY GrapeLine routes, schedules, bus stop locations, and so forth to respond to demand, special events and other occurrences without requiring an amendment pursuant to this ARTICLE 5, provided that such changes do not result in a change in the number of annual vehicle service hours of more or less than fifteen percent (15%).

In the event a federal, state or local government adopts any law, rule or regulation that requires an increase in the minimum wages or benefits paid to or provided to employees of CONTRACTOR subsequent to the date of execution of this AGREEMENT, then CITY and CONTRACTOR agree to meet and negotiate an equitable adjustment to the compensation paid to CONTRACTOR by CITY hereunder to allow CONTRACTOR to recover those costs.

ARTICLE 6 – CHANGES IN LEVEL OF SERVICE

The "baseline service level" is the amount of service, approximately 33,000 vehicle hours of service annually during the initial term of this AGREEMENT (July 1, 2012 through June 30, 2015). CITY may increase, decrease, or otherwise change the service to be provided as set forth below. Changes to service levels are provided as follows:

Emergency Adjustments. Temporary emergency adjustments in service may be initiated either by CITY or CONTRACTOR only in the event of an emergency or circumstance which requires a detour or an adjustment in routing or scheduling under circumstances where there is no opportunity for the parties to confer; provided, however, that such adjustments do not constitute a "substantial change" as defined below.

The party initiating the emergency adjustment shall notify the other party immediately of such occurrence. CITY shall specify steps to be taken by CONTRACTOR to notify patrons of the change in routing and/or scheduling necessitated by such emergency adjustments, and/or modifications to the emergency adjustments made by CONTRACTOR. In making temporary emergency adjustments, should CONTRACTOR incur added expenses beyond those compensated under the primary terms of this AGREEMENT, CITY and CONTRACTOR shall negotiate a fair and equitable adjustment in compensation for service.

Substantial Changes in Service Level Any proposed change in the service level shall be deemed "substantial" if such results in one or more of the following conditions:

- An increase of 15% or more in revenue vehicle service hours, as computed from the baseline service level.
- A decrease of 15% or more in total revenue vehicle service hours as computed from the base line service level.
- The cumulative total of non-substantial service changes over a period of time that results in a service level either more than 15% above or 15% below, the established baseline service level.

CONTRACTOR shall be given no less than thirty (30) days written notice of the intent to order such substantial changes, and shall have an opportunity to be heard prior to the effective date of such order. Such order shall not be effective sooner than thirty (30) days from the date of issuance, unless mutually agreed otherwise in writing by both parties.

CONTRACTOR shall be compensated following any substantial change to the service level according to the Article 9 of this AGREEMENT.

Non-Substantial Changes in Service Level. CITY may order non-substantial increases, decreases or other alterations to the service upon written notice to CONTRACTOR. Said notice shall specify the change(s) requested and the effective date(s). CONTRACTOR shall be allowed thirty (30) days to implement non-substantial changes.

Changes in Subsidiary Duties. CITY may request change in CONTRACTOR'S reporting requirements, training and safety programs, inventory requirements, testing procedures, personnel practices, and/or other operating details that do not result in change to the service level. If CONTRACTOR declines such requests, or such request would result in a material increase in CONTRACTOR'S costs or in the time required for performance, CONTRACTOR shall notify CITY within seven (7) days after receipt of such request and shall submit a claim

detailing such objections and/or increases. The PARTIES shall negotiate an equitable settlement of CONTRACTOR'S claim, which reflects actual increases or decreases in CONTRACTOR'S total costs to perform AGREEMENT caused by the change in question.

ARTICLE 7 - INSURANCE; PERFORMANCE SECURITY

7.1 Insurance

a. CONTRACTOR'S Responsibilities - Minimum Types and Scope of Insurance

The insurance requirements specified in this article shall apply to the CONTRACTOR and any subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that CONTRACTOR authorizes to work under this Agreement (hereinafter collectively referred to as "Agents"). The CONTRACTOR and all Agents are required to procure and maintain at their sole cost and expense the insurance coverage subject to all of the requirements set forth below. Such insurance shall remain in full force and effect throughout the term of this Agreement. To the extent that any Agent does not procure and maintain such insurance coverage, the CONTRACTOR shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling CONTRACTOR's indemnity obligation as to itself or any of its Agents in the absence of coverage. In the event CONTRACTOR or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that the CONTRACTOR's insurance be primary without any right of contribution from CITY. Prior to beginning work under this AGREEMENT, CONTRACTOR shall provide CITY with satisfactory evidence of compliance with the insurance requirements of this article.

i. Workers Compensation and Employers' Liability Insurance -

Workers Compensation with Statutory Limits, as required by Section 3700 et seq. of the California Labor Code, or any subsequent amendments or successor acts thereto governing the liability of employers to their employees.

1. Workers' Compensation coverage in compliance with the statutory benefits as allowed by California law.
2. Employer's Liability coverage in the amount of \$1,000,000 per accident or disease.
3. The Workers' Compensation insurance shall include the following endorsement as further detailed in the Endorsements Section below:

a. Waiver of Subrogation.

i. This waiver of subrogation shall also include a waiver of subrogation for any injuries to operators and drivers of passenger transit service vehicles that occur on the premises of CITY while operators or drivers are outside of the passenger transit service vehicles.

ii. Commercial General Liability Insurance - Commercial General Liability insurance for bodily injury and property damage coverage of at least \$5

million per occurrence and a general aggregate limit of at least **\$10 million**. Such insurance shall cover all of CONTRACTOR's operations, **other than CITY's operations provided under this AGREEMENT**. This insurance shall include coverage for, but not be limited to:

1. Premises and operations;
2. Products and completed operations;
3. Contractual liability;
4. Personal injury;
5. Advertising injury;
6. Explosion, collapse, and underground coverage (xcu);
7. Employment Practices liability; and
8. Broad form property damage.

Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:

1. Additional Insured;
2. Cross Liability or Severability of Interests Clause;
3. Primary and Non-Contributory wording; and
4. Waiver of Subrogation.

- iii. **Automobile Liability Insurance** - Automobile Liability insurance providing bodily injury and property damage with a combined single limit of at least **\$2 million** per occurrence. This insurance shall include coverage for the following types of vehicles, except while being used to provide CITY's passenger transit service:

1. All Owned Vehicles;
2. Non-Owned Vehicles; and
3. Hired or Rental Vehicles.

Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:

1. Additional Insured;
2. Cross Liability or Severability of Interests Clause;
3. Primary and Non-Contributory wording; and
4. Waiver of Subrogation.

- iv. **Automobile Physical Damage Insurance** - Automobile Physical Damage insurance providing Comprehensive and Collision insurance covering CONTRACTOR-owned vehicles. Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:

1. Waiver of Subrogation.

- v. **Crime Insurance** - CONTRACTOR will provide Crime insurance, including coverage for dishonesty and theft of money and securities from any inside location or outside messenger, by CONTRACTOR's officers, employees or agents, with the following limits of liability:

| | |
|---------------------|----------|
| Employee Dishonesty | \$50,000 |
| Depositors Forgery | \$50,000 |
| Off and On Premises | \$50,000 |
| Computer Fraud | \$50,000 |

Regarding these coverages:

1. CONTRACTOR shall reimburse CITY for any and all losses within the deductible, for insured losses, the cost to prove the loss, accountants' fees, defense costs, including attorney's fees and costs, and any other fees associated with a claim for coverage under this Section (a) (v).
2. The policy shall contain a Joint Loss Payee endorsement naming CITY as further detailed in the Endorsements Section below.

vi. Endorsements

1. **Additional Insured** - The referenced policies and any Excess or Umbrella policies shall include as Additional Insured's the City of Lodi, its elected and appointed officials, officers, employees, volunteers and agents while acting in such capacity, and their successors or assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.
2. **Waiver of Subrogation** - The referenced policies and any Excess or Umbrella policies shall contain a waiver of subrogation in favor of the City of Lodi and its elected and appointed officials, officers, directors, employees, volunteers and agents while acting in such capacity, and their successors and assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.
3. **Primary Insurance** - The referenced policies and any Excess and Umbrella policies shall indicate that they are primary to any other insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim, up to and including the total limit of liability, without right of contribution from any of the insurance effected or which may be effected by the City of Lodi.
4. **Severability of Interests or Cross Liability** - The referenced policies and any Excess or Umbrella policies shall contain either a Cross Liability endorsement or Severability of Interests Clause and stipulate that inclusion of the City of Lodi, and its elected and appointed officials, officers, directors, employees, volunteers and agents while acting in such capacity, and their successors or assignees, as an Additional Insured shall not in any way affect CITY's rights either as respects any claim, demand, suit or judgment made, brought or recovered against the CONTRACTOR. Said policy shall protect the CONTRACTOR and the CITY in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

5. **Joint Loss Payee Endorsement** - CITY shall be named as a Joint Loss Payee on the CONTRACTOR's Employee Dishonesty policy.

vii. **Evidence of Insurance**

Prior to commencing work or entering onto the Property, CONTRACTOR shall provide the Risk Manager of CITY with a certificate evidencing coverage, and upon request, a certified duplicate original of the policy. The certificate shall also show that the CONTRACTOR's policy(ies) will not be cancelled or have coverage reduced without 30 days prior written notice to CITY's Transportation Manager and CITY's Risk Manager.

viii. **General Provisions**

1. **Notice of Cancellation** - The policies shall provide that the CONTRACTOR's policies will not be cancelled or have limits reduced or coverage altered without 30 days prior written notice to CITY's Transportation Manager and CITY's Risk Manager.
2. **Acceptable Insurers** - All policies will be issued by insurers acceptable to CITY (generally with a Best's Rating of A-X or better).
3. **Self-insurance** - Upon evidence of financial capacity satisfactory to CITY and the CONTRACTOR's agreement to waive subrogation against CITY respecting any and all claims that may arise, the CONTRACTOR's obligations hereunder may be satisfied in whole or in part by adequately funded self-insurance.
4. **Deductibles and Retentions** - CONTRACTOR shall identify self insured retention (SIR) limits. It is at the sole approval of CITY to accept SIR limits. The CONTRACTOR shall be responsible for payment of any deductible or retention on the CONTRACTOR's policies without right of contribution from CITY. If for whatever reason, CONTRACTOR is unable or unwilling to pay its SIR to obtain the necessary liability coverage(s) required under this AGREEMENT, CITY will have the option, to the fullest extent of the law, of paying the SIR on behalf of CONTRACTOR from any source, so as to maintain the liability coverage(s).

b. **CITY's Insurance Responsibilities - Minimum Types and Scope of Insurance**

CITY, at its own cost and expense, will maintain in full force and effect during the entire term of this AGREEMENT and any extension period, unless otherwise agreed by the Parties, the following insurance:

i. **General Liability**

CITY currently has general liability and physical damage insurance coverage under the California Transit Insurance Pool (CaTIP). CITY will continue to provide general liability and physical damage insurance on all CITY owned transit vehicles and property with a minimum limit of liability per occurrence of **\$20 million** for bodily injury and for property damage.

CONTRACTOR shall be a Covered Party on the liability coverage provided by CalTIP. CITY shall be responsible for any deductible or self insured retention. This insurance shall include coverage for, but not be limited to:

1. Premises and operations;
2. Products and completed operations;
3. Contractual liability;
4. Personal injury;
5. Advertising injury;
6. Explosion, collapse, and underground coverage (xcu); and
7. Broad form property damage.

Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:

1. Cross Liability or Severability of Interests Clause;
2. Primary Wording; and
3. Waiver of Subrogation.

ii. **Automobile Physical Damage Insurance for Vehicles**

CITY will maintain at its own cost and expense an automobile physical damage insurance program to cover CITY-owned vehicles and equipment and CONTRACTOR shall be a Covered Party on the physical damage coverage provided by CalTIP. CONTRACTOR will cooperate fully with CITY in filing claims with and recovering payments due from CITY's insurers. CONTRACTOR shall be responsible for payment of the deductible up to \$5,000 for any claim arising out of an incident deemed to be a preventable accident on the part of CONTRACTOR or its subcontractors or employees. Such insurance shall include the following endorsement as further detailed in the Endorsements Section below:

1. Waiver of Subrogation.

iii. **Endorsements**

1. **Waiver of Subrogation** - The referenced policies and any Excess or Umbrella policies shall contain a waiver of subrogation in favor of CONTRACTOR to the extent of the indemnification by CITY in this AGREEMENT.
2. **Primary Insurance** - The referenced policies and any Excess and Umbrella policies shall indicate that they are primary to any other insurance and the insurance company(ies) providing such policy(ies).
3. **Severability of Interests or Cross Liability** - The referenced policies and any Excess or Umbrella policies shall contain either a Cross Liability endorsement or Severability of Interests Clause and stipulate that inclusion of CONTRACTOR as a Covered party shall not in any way affect CITY's rights either as respects any claim, demand, suit, or judgment. Said policy shall protect CONTRACTOR and CITY in the same manner as though a separate policy had been issued to each, but nothing in said

policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

iv. **Evidence of Insurance**

Prior to commencing work, CITY shall provide CONTRACTOR with a certificate of insurance evidencing coverage, and upon request, a certified duplicate original of the policy. The certificate shall also show that CITY's policy(ies) will not be cancelled or have coverage reduced without 30 days or 60 days prior written notice to CONTRACTOR, whichever applies.

v. **General Provisions**

1. **Notice of Cancellation** - CITY shall use its best efforts to obtain 60 days' written notice to CONTRACTOR. However, in no event will such policy provide for less than 30 days' prior written notice of cancellation to CONTRACTOR except for non-payment of premium. In the event said insurance policy is cancelled for any reason, then CITY shall replace said policy during the notification period with another policy which complies with the requirements of this AGREEMENT.
2. **Retentions and Self-insurance** - CITY shall have the right to maintain self-insured retentions at any level or levels of up to the CalTIP limit. Currently, CITY has no SIR with CalTIP.
3. **Filing and Payment of Claims** - CONTRACTOR will cooperate fully with CITY in the investigation and processing of any and all claims of whatever nature against the CONTRACTOR and CITY, including cooperation with CalTIP's Contract Third Party Claims Administrator, and in CITY's attempts to recover payments from CITY's insurers. If **CITY fails or refuses to pay** losses incurred within any self-insured retention, CONTRACTOR shall have the right to terminate this AGREEMENT upon 30 days' written notice. This right of termination, however, applies only to failure or refusal by CITY to pay losses incurred within self-insured retentions, and not to failures or refusals to pay losses falling within gaps or shortfalls in insurance coverage created by previous payment of losses which depleted or exhausted the annual aggregate limits applicable to such insurance. Nothing contained in this subsection should be deemed to foreclose or limit CITY's rights to defend against any claims.

c. **General Insurance Provisions Applicable to Both CONTRACTOR and CITY**

The Parties further agree as follows:

- i. **Failure to Procure or Maintain Insurance** - The failure of either party to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this AGREEMENT.
- ii. **Claims Costs** - Each of the Parties, at its sole cost and expense, will be

responsible for the investigation, administrative handling, and settlement of claims for injury, death, or damage arising out of the performance of this AGREEMENT for which it is responsible. Each party shall respond to reasonable requests by the other party as to the status of all claims presented for which the requesting party is responsible. The Parties agree that the furnishing of such information is for the purpose of keeping each other informed, as potential co-defendants, with respect to such claims, is a privileged co-defendant communication, does not waive the attorney-client, attorney work product or any other applicable privilege and shall not be admissible in any action or proceeding of any kind whatsoever as an admission or concession of liability or for any other purpose whatsoever, nor shall any such information exchanged be admissible as evidence of liability to, or damages allegedly suffered by any claimant.

iii. **Claims Made Coverage**

If any insurance specified above shall be provided on a claim-made basis, then in addition to coverage requirements above, such policy shall provide that:

1. Policy retroactive date coincides with or precedes the start of work (including subsequent policies purchased as renewals or replacements).
2. Every effort will be made to maintain similar insurance for at least three (3) years following completion of work, including the requirement of adding all additional insured's.
3. If insurance is terminated for any reason, the party agrees to purchase an extended reporting provision of at least three (3) years to report claims arising from work performed in connection with this AGREEMENT.
4. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

7.2 Performance Security

As a condition precedent to the effectiveness of this AGREEMENT, CONTRACTOR shall furnish to CITY a Performance Security in the amount equal to Two Hundred Fifty Thousand Dollars (\$250,000). The Performance Security shall be in a form acceptable to CITY and shall be held by CITY throughout the term of this AGREEMENT to guarantee performance by CONTRACTOR.

ARTICLE 8 - INDEMNIFICATION

CONTRACTOR shall, to the extent permitted by law, indemnify, defend, and hold harmless CITY, its elected and appointed officials, officers, agents, employees, and volunteers, and CITY's Liability pool (CalTIP) and its insurers, from any liability imposed for injury (as defined by California Government Code Section 810.8), claims or demands, including reasonable attorney's fees, costs, and expenses, whether arising before or after completion of the work hereunder, or in any manner directly or indirectly caused, occasioned or contributed to, or claimed to be caused, occasioned or contributed to, in whole or in part, by reason of any act or omission, of CONTRACTOR, or of anyone acting under CONTRACTOR'S direction or control or on its behalf, in connection with or incident to or arising out of the performance of this AGREEMENT, except to the extent that such liability arises from or is caused by the sole negligence or willful misconduct of CITY, its elected and appointed officials, officers, agents, employees or volunteers.

CITY maintains a policy of automobile liability insurance for the operation of the vehicles to be used in accordance with the terms of this Agreement. Therefore, CITY agrees that CONTRACTOR'S duty to indemnify CITY shall not include nor extend to any claim, loss, liability or damage from any cause, including but not limited to injury to person, property, or wrongful death, including payment of reasonable attorney's fees, and all costs and expenses, arising directly or indirectly out of any act or omission of CONTRACTOR, whether or not the act or omission arises from the sole negligence or other liability of CONTRACTOR, or its agents, officers, employees, or volunteers relating to the operation of passenger buses (unless it is the direct result of CONTRACTOR'S gross negligence or willful misconduct) and that CITY and CITY's liability pool and insurer waives any subrogation rights.

With respect to those claims arising from a professional error or omission, as well as employment practices liability, CONTRACTOR shall indemnify, defend and hold harmless CITY, its elected and appointed officials, officers, agents, employees, and volunteers, and CITY's Liability pool (CalTIP) and its insurers, from any liability arising from the professionally negligent acts, errors or omissions of CONTRACTOR.

This indemnity and hold harmless provision, insofar as it may be adjudged to be against public policy, shall be void and unenforceable only to the minimum extent necessary so that the remaining terms of this indemnity and hold harmless provision may be within public policy and enforceable.

ARTICLE 9 - PAYMENT

CITY agrees to pay CONTRACTOR for the performance of services set forth in this AGREEMENT as follows:

9.1 Price Formula

For services rendered under Article 4 of this AGREEMENT, entitled "Scope of Work", and detailed in Exhibit A, which is attached hereto and made a part hereof, payment shall be based on the following rates for the periods of **July 1, 2012 through June 30, 2013 (2012-13); July 1, 2013 through June 30, 2014 (2013-14); and, July 1, 2014 through June 30, 2015 (2014-15).**

A. **FIXED HOURLY RATE**, per Vehicle Revenue Hour:

- \$ 35.131 for CITY fixed route and VineLine/DAR during 2012-13.
- \$ 36.244 for CITY fixed route and VineLine/DAR, during 2013-14.
- \$ 37.230 for CITY fixed route and VineLine/DAR, during 2014-15.

In the event CITY exercises any option year(s) allowed under this AGREEMENT (Section 11.3), the fixed hourly rate shall be adjusted for each option year in a percentage amount equal to eighty percent (80%) of the annual change in the Consumer Price Index (CPI) for all Urban Consumers for San Francisco-Oakland-San Jose, California area. All items (1982-84=100) published by the US Department of Labor, Bureau of Labor Statistics (the Index) for the twelve (12) month period ending December 31 of the preceding calendar year.

Vehicle Revenue Hours will be calculated based on the actual time that each revenue vehicle is in service and available to passengers. This means from the first scheduled pick up time point to the last scheduled time point. For fixed route services, Vehicle Revenue Hours are defined as the scheduled hours of service, as set forth in the current "GrapeLine Fixed Route Maps and Bus Schedules", which is available upon CONTRACTOR'S request from CITY, or any revisions thereto, plus or minus adjustments for schedule deviations, trippers, or other service level changes as specifically authorized by the CITY under Article 6 of this AGREEMENT.

For Dial-A-Ride and VineLine ADA paratransit service, Vehicle Revenue Hours are defined as the time from when a vehicle makes its first pick up through the time of its last drop off, regardless of whether the first pick-up is a no-show. "No-show" is defined when a passenger reserves a ride but does not meet the vehicle at the scheduled time and in accordance with CITY'S DAR/VL Rider's Guide.

Vehicle Revenue Hours shall specifically exclude deadhead hours, including time for travel to and from storage facilities, changing routes, downtime for road calls, road tests, fueling, vehicle inspections, driver training, and driver lunches and rest breaks but shall include layover time.

The fixed hourly rates specified herein shall compensate CONTRACTOR for all fixed hourly rate cost elements detailed in CONTRACTOR'S Operations Service Proposal, which is attached hereto as Exhibit H and is incorporated herein by this reference.

B. **FIXED MONTHLY RATE**

- \$ 43,586.79 per service month during 2012-2013.
- \$ 45,386.41 per service month during 2013-2014.
- \$ 46,584.02 per service month during 2014-2015.

In the event CITY exercises any option year(s) allowed under this AGREEMENT (Section 11.3), the fixed hourly rate shall be adjusted for each option year in a percentage amount equal to eighty percent (80%) of the annual change in the Consumer Price Index (CPI) for all Urban Consumers for San Francisco-Oakland-San Jose, California area. All items (1982-84=100) published by the US Department of Labor, Bureau of Labor Statistics (the Index) for the twelve (12) month period ending December 31 of the preceding calendar year.

9.2 Invoices; Payment

On or before the fifth day of each month, CONTRACTOR shall submit an invoice to CITY, Attention: Transportation Manager, itemizing CONTRACTOR'S full and complete performance under this AGREEMENT for the previous one-month period. Invoices shall be in such form and shall incorporate such supporting documentation as CITY may from time to time require.

All payments by CITY shall be made in arrears after the service has been provided by CONTRACTOR. CITY shall pay CONTRACTOR'S invoice within 30 days following receipt of such invoice. If CITY disputes any item on an invoice for a reasonable cause, CITY may deduct the disputed item from the payment, but shall not delay payment for the undisputed portions. The amounts and reasons for the disputed item(s) shall be stated in writing by CITY and sent to CONTRACTOR within fifteen (15) working days after receipt of invoice by CITY. CONTRACTOR and CITY shall then resolve payment disputes pursuant to Section 15.13 herein.

9.3 Greyhound Commission

In accordance with the Scope of Work, the CONTRACTOR shall staff the Greyhound ticket sales counter (currently shared with CITY sales counter and transit service duties) during regularly posted lobby hours. CITY shall provide ticket commission (currently 83.3%) to CONTRACTOR from Greyhound commission sales. CONTRACTOR shall submit an invoice to CITY for Greyhound commission sales within five (5) business days after receipt of amount for Greyhound commission sales.

9.4 Failure to Perform

CITY recognizes that the operation of a public transit service is subject to circumstances and variables beyond the control of CONTRACTOR. However, a properly run service will take steps to reasonably accommodate such circumstances without compromising the safety or reliability of the service.

CITY and CONTRACTOR will monitor service performance of the operation to assure that strict adherence of routes and schedules are being maintained. If performance is found to be substandard, CITY may request, in writing, adequate assurance of performance as defined in the Scope of Work (Exhibit A).

CONTRACTOR understands that continual substandard performance, including, but not limited to service runs departing ahead of schedule, missed service runs, service runs departing scheduled stops fifteen minutes or more after the scheduled time, frequent accidents, safety violations, frequent vehicle failure, frequent public complaints regarding driver behavior, or dirty vehicles are grounds for termination of this AGREEMENT.

Penalties for Non Compliance and Performance of this AGREEMENT will be assessed in accordance with the Scope of Work. CITY will deduct penalty assessments from monthly payments by CITY to CONTRACTOR.

ARTICLE 10 - OPERATING REVENUES

All operating revenues collected by CONTRACTOR are the property of CITY. For purposes of this AGREEMENT, operating revenues shall include, but are not necessarily limited to, farebox receipts, pass and ticket sales revenue, and advertising revenues. CONTRACTOR shall be

responsible for handling farebox receipts, and pass and ticket sales revenues in the manner provided for in CONTRACTOR'S Scope of Work, attached hereto as Exhibit A, and as necessary for CITY to meet the requirements of State and federal funding sources.

ARTICLE 11 - TERM OF AGREEMENT

11.1 Base Term

This AGREEMENT shall become effective July 1, 2012 and shall continue in full force and effect through June 30, 2015 unless earlier terminated as herein provided.

11.2 Month-to-Month Extensions

Upon completion of the full term of this AGREEMENT, CITY at its sole discretion may extend the term of this AGREEMENT on a month-to-month basis up to a maximum of three (3) months. CITY shall notify CONTRACTOR of such extensions at least thirty (30) days prior to the termination date of this AGREEMENT. The compensation rates in effect during the last monthly period of the full term of this AGREEMENT shall remain in effect and be applicable to any extensions.

11.3 Option Term

In consideration of this AGREEMENT, CONTRACTOR hereby grants the below options, exercisable in writing at CITY'S sole election, any time on or before the date specified herein and as follows:

- A. Description - CITY may extend the services provided by CONTRACTOR under this AGREEMENT for the terms specified hereafter.
- B. Price - In the event CITY exercises any option year(s) allowed under this AGREEMENT, rates shall be adjusted for each option year in a percentage amount equal to eighty percent (80%) of the annual change in the Consumer Price Index (CPI) for all Urban Consumers for San Francisco-Oakland-San Jose, California area. All items (1982-84=100) published by the US Department of Labor, Bureau of Labor Statistics (the Index) for the twelve (12) month period ending December 31 of the preceding calendar year.
- C. Option Exercise Date - On or before April 1, 2015 for an initial one (1)-year extension, and on or before April 1, 2016 for a second 1-year extension.
- D. Term - Two (2) one (1)-year extensions, July 1, 2015 through June 30, 2016, and July 1, 2016 through June 30, 2017.

It is mutually understood and agreed by the PARTIES that all work performed and services provided under the exercised option shall be in strict compliance with all of the requirements of this AGREEMENT as such may be amended from time to time, in writing, by mutual AGREEMENT of the PARTIES.

It is mutually understood and agreed that CITY is under no obligation whatsoever to exercise an option and that no representations have been made by CITY committing it to such exercise. The exercise of an option may be made by amendment of this AGREEMENT. Should CITY elect to exercise an option, upon CONTRACTOR'S acceptance of CITY's election to exercise

the option herein described, the PARTIES shall execute a written amendment to this AGREEMENT.

ARTICLE 12 – CITY ACCESS TO VEHICLES

CITY shall be permitted access to all vehicles and equipment identified in Exhibit TBD during the hours of operation and at all other times which may be acceptable to CONTRACTOR for the purpose of conducting inspections, surveys, maintenance, or related activities as CITY may deem necessary for the proper administration of the provisions of this AGREEMENT. Exhibit TBD is attached hereto and incorporated by this reference.

ARTICLE 13 - COMPLIANCE WITH FEDERAL LAWS AND REGULATIONS

This AGREEMENT is financed in part with funding received under Section 5307 of the Federal Transit Administration ("FTA"). All services performed by CONTRACTOR pursuant to this AGREEMENT shall be performed in accordance and full compliance with all applicable federal laws and requirements including, but not limited to:

13.1 Drug and Alcohol Testing

CONTRACTOR agrees to establish and implement a drug and alcohol testing program that complies with 49 U.S.C. §5331 and 49 Code of Federal Regulations ("CFR") Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California, or CITY, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. CONTRACTOR further agrees further to certify annually its compliance with Parts 653 and 654 on or before March 15 and to submit the Management Information System (MIS) reports on or before March 15 to the CITY Transportation Manager. To certify compliance CONTRACTOR shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative AGREEMENTs," which is published annually in the Federal Register.

13.2 Buy America Requirements- Not Applicable

13.3 Charter Bus Requirements

CONTRACTOR agrees to comply with 49 U.S.C. §5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR Part 604.9. Any charter service provided under one of the exceptions must be "incidental" (i.e., it must not interfere with or detract from the provision of mass transportation).

13.4 School Bus Requirements

Pursuant to 49 U.S.C. §5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

13.5 Energy Conservation Requirements

CONTRACTOR agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

13.6 Clean Water Requirements

- A. CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§1251 et seq. CONTRACTOR agrees to report each violation to CITY and understands and agrees that CITY will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

13.7 Lobbying

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, 2 U.S.C. § 1601, et seq., as amended, contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any CITY, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

13.8 Federal Changes

CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the AGREEMENT (Form FTA MA (18) dated October, 2011) between CITY and FTA, as they may be amended or promulgated from time to time during the term of this AGREEMENT. CONTRACTOR'S failure to so comply shall constitute a material breach of this AGREEMENT.

13.9 Clean Air

- A. CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§7401 et seq. CONTRACTOR agrees to report each violation to CITY and understands and agrees that CITY will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

13.10 Recycled Products

Recovered Materials – CONTRACTOR agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. §6962, including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

13.11 No Government Obligation to Third Parties

No Obligation by the Federal Government.

- A. CITY and CONTRACTOR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the this AGREEMENT, absent the express written consent by the Federal Government, the Federal Government is not a party to this AGREEMENT and shall not be subject to any obligations or liabilities to CITY, CONTRACTOR, or any other party (whether or not a party to this AGREEMENT) pertaining to any matter resulting from this AGREEMENT.
- B. CONTRACTOR agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

13.12 Program Fraud and False or Fraudulent Statements and Related Acts

- A. CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§3801 et seq., and United States Department of Transportation ("U.S. DOT") regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this AGREEMENT. Upon execution of this AGREEMENT, CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this AGREEMENT or the FTA assisted project for which this work is being performed. In addition to other penalties that may be applicable, CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on CONTRACTOR to the extent the Federal Government deems appropriate.
- B. CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with this AGREEMENT that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. §5307, the Government reserves the right to impose the penalties of 18 U.S.C §1001 and 49 U.S.C. §5307(n)(1) on CONTRACTOR, to the extent the Federal Government deems appropriate.
- C. CONTRACTOR agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

13.13 Privacy Act

Contracts Involving Federal Privacy Act Requirements - The following requirements apply to CONTRACTOR and its employees that administer any system of records on behalf of the Federal Government under any contract:

- A. CONTRACTOR agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, as amended, 5 U.S.C. §552a. Among other things, CONTRACTOR agrees to obtain the express consent of the Federal Government before CONTRACTOR or its employees operate a system of records on behalf of the Federal Government. CONTRACTOR understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of this AGREEMENT.
- B. CONTRACTOR also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

13.14 Civil Rights Requirements

The following requirements apply to this AGREEMENT:

- A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. §2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. §12132, and Federal transit law at 49 U.S.C. §5332, CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, CONTRACTOR agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to this AGREEMENT:
 - (1) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000e, and Federal transit laws at 49 U.S.C. §5332, CONTRACTOR agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. §2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the performance of this AGREEMENT. CONTRACTOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading,

demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- (2) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §623 and Federal transit law at 49 U.S.C. §5332, CONTRACTOR agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, CONTRACTOR agrees to comply with any implementing requirements FTA may issue.
- (3) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, CONTRACTOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

- C. CONTRACTOR also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

13.15 Transit Employee Protective Agreements

- A. CONTRACTOR agrees to comply with applicable transit employee protective requirements as follows:

- (1) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, CONTRACTOR agrees to carry out the transit operations work set forth in this AGREEMENT in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this AGREEMENT and to meet the employee protective requirements of 49 U.S.C. §5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on this AGREEMENT. CONTRACTOR agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. However, the requirements of this subsection (1), do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. §5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. §5311. Alternate provisions for those projects are set forth in subsections (2) and (3c) of this clause.
- (2) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. §5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If this AGREEMENT involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. §5333(b) are necessary or

appropriate for the state and the public body subrecipient for which work is performed on this AGREEMENT, CONTRACTOR agrees to carry out the performance of this AGREEMENT in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. §5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. CONTRACTOR agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

CONTRACTOR also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

13.16 Disadvantaged Business Enterprises (DBE)

- A. This AGREEMENT is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. CITY has not established a specific DBE goal for this AGREEMENT, however, CONTRACTORS are encouraged wherever possible to include DBE owned and operated sub contractors.
- B. The CONTRACTOR shall not discriminate on the basis of race, color, national origin, or sex in the performance of this AGREEMENT. The CONTRACTOR shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted AGREEMENT. Failure by the CONTRACTOR to carry out these requirements is a material breach of this AGREEMENT, which may result in the termination of this AGREEMENT or such other remedy as CITY deems appropriate. Each subcontract the CONTRACTOR signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- C. CONTRACTOR is required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- D. CONTRACTOR is required to pay its subcontractors performing work related to this AGREEMENT for satisfactory performance of that work no later than 30 days after CONTRACTOR'S receipt of payment for that work from CITY. In addition, CONTRACTOR may not hold retainage from its subcontractors.
- E. CONTRACTOR must promptly notify CITY whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. CONTRACTOR may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of CITY.

13.17 Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by

reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this AGREEMENT. CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any CITY requests which would cause CITY to be in violation of the FTA terms and conditions.

13.18 Access to Records and Reports

CONTRACTOR agrees to provide CITY, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of CONTRACTOR which are directly pertinent to this AGREEMENT for the purposes of making audits, examinations, excerpts and transcriptions. CONTRACTOR also agrees, pursuant to 49 CFR 633.17 to provide the FTA Administrator or his/her authorized representatives, including any PMO Contractor, access to CONTRACTOR'S records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

CONTRACTOR agrees to maintain all books, records, accounts and reports required under this AGREEMENT for a period of not less than three (3) years after the date of termination or expiration of this AGREEMENT, except in the event of litigation or settlement of claims arising from the performance of this AGREEMENT, in which case CONTRACTOR agrees to maintain same until CITY, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

13.19 Suspension and Debarment

This AGREEMENT is a covered transaction for purposes of 49 CFR Part 29. As such, CONTRACTOR is required to verify that CONTRACTOR, nor any of its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

CONTRACTOR is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by CITY. If it is later determined that CONTRACTOR knowingly rendered an erroneous certification, in addition to remedies available to CITY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

13.20 Access Requirements for Persons with Disabilities

CONTRACTOR agrees to comply with all applicable requirements of the Americans with Disabilities Act (ADA) of 1990, as amended, 42 U.S.C. 12101 et. seq., Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; 49 U.S.C. 5301(d); and all regulations promulgated to implement the ADA and Section 504 of the Rehabilitation Act of 1973, as amended, as may be applicable to CONTRACTOR.

13.21 Alcohol Abuse

To the extent CONTRACTOR or any subcontractor at any tier, or their employees, perform a safety-sensitive function under this AGREEMENT, CONTRACTOR agrees to comply with, and assures the compliance of each affected subcontractor at any tier, and their employees with 49 U.S.C. 5331, and FTA regulations, "Prevention of Alcohol Misuse in Transit Operations," 49 C.F.R., Part 654.

13.22 Fly America

CONTRACTOR agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provides that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. CONTRACTOR shall submit, if a foreign air carrier was used, as appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. CONTRACTOR agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

13.23 Prompt Payment

- A. Prompt Progress Payment to Subcontractors Attention is directed to the provisions in Federal Regulations (49 CFR 26.29) concerning payment to subcontractors. CONTRACTOR shall make prompt and regular incremental acceptances of portions, as determined by CITY of the contract work and pay retainage to the prime contractor based on these acceptances.
- B. Prompt Payment of Payment of Withheld Funds to Subcontractors CONTRACTOR shall return all monies withheld in retention from all subcontractors within thirty (30) days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by CITY. Federal Regulation (49 CFR 26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with CITY'S prior written approval. Any violation of this provision shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code.

This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient

subcontractor performance; and/or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE subcontractors

13.24 Contract Work Hours and Safety Standards Act

CONTRACTOR agrees to comply, and assures the compliance of each third party contractor and each subcontractor at any tier, during the term of this AGREEMENT, with the following employee protection requirements for contract employees.

- A. Overtime requirements No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.
- B. Violation; liability for unpaid wages; liquidated damages In the event of any violation of the clause set forth in paragraph A of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this section.
- C. Withholding for unpaid wages and liquidated damages CONTRACTOR shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by any contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph B of this section.
- D. Subcontracts The contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

ARTICLE 14 - TERMINATION

- A. Termination for Convenience CITY may terminate this AGREEMENT, in whole or in part, at any time by written notice to CONTRACTOR when it is in CITY'S best interest. CONTRACTOR shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. CONTRACTOR shall promptly submit its termination claim to CITY to be paid to CONTRACTOR. If CONTRACTOR has any

property in its possession belonging to CITY, CONTRACTOR will account for the same, and dispose of it in the manner CITY directs.

- B. Termination for Default If CONTRACTOR fails to perform in the manner called for in this AGREEMENT, or if CONTRACTOR fails to comply with any other provisions of this AGREEMENT, CITY may terminate this AGREEMENT for default. Termination shall be effected by serving a notice of termination on CONTRACTOR setting forth the manner in which CONTRACTOR is in default. CONTRACTOR will only be paid the contract price for services performed in accordance with the manner of performance set forth in this AGREEMENT.

If it is later determined by CITY that CONTRACTOR had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of CONTRACTOR, CITY, after setting up a new delivery of performance schedule, may allow CONTRACTOR to continue work, or treat the termination as a termination for convenience.

- C. Opportunity to Cure CITY in its sole discretion may, in the case of a termination for breach or default, allow CONTRACTOR an appropriate period of time, to be determined in the sole discretion of CITY, in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If CONTRACTOR fails to remedy to CITY'S satisfaction the breach or default of any of the terms, covenants, or conditions of this AGREEMENT within ten (10) days after receipt by CONTRACTOR of written notice from CITY setting forth the nature of said breach or default, CITY shall have the right to terminate this AGREEMENT without any further obligation to CONTRACTOR. Any such termination for default shall not in any way operate to preclude CITY from also pursuing all available remedies against CONTRACTOR and its sureties for said breach or default.

- D. Waiver of Remedies for any Breach In the event that CITY elects to waive its remedies for any breach by CONTRACTOR of any covenant, term or condition of this AGREEMENT, such waiver by CITY shall not limit CITY'S remedies for any succeeding breach of that or of any other term, covenant, or condition of this AGREEMENT.
- E. Termination for Convenience CITY, by written notice to CONTRACTOR, may terminate this AGREEMENT, in whole or in part, when it is in CITY'S interest. If this AGREEMENT is terminated, CITY shall be liable only for payment under the payment provisions of this AGREEMENT for services rendered by CONTRACTOR before the effective date of termination.
- F. Termination for Default If CONTRACTOR fails to deliver supplies or to perform the services within the time specified in this AGREEMENT or any extension thereof, or if CONTRACTOR fails to comply with any other provision of this AGREEMENT, CITY may terminate this AGREEMENT for default. CITY shall terminate by delivering to CONTRACTOR a written Notice of Termination specifying the nature of the default. CONTRACTOR will only be paid the contract price for services performed in accordance with the manner or performance set forth in this AGREEMENT.

If, after termination for failure of CONTRACTOR to fulfill its obligations under this AGREEMENT, it is determined that CONTRACTOR was not in default, the rights and

obligations of the PARTIES shall be the same as if the termination had been issued for the convenience of CITY.

ARTICLE 15 - GENERAL PROVISIONS

15.1 Conflict of Interest

CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of service required to be performed under this AGREEMENT. CONTRACTOR further covenants that in the performance of this AGREEMENT, no person having such interest shall be employed by CONTRACTOR.

15.2 Conflict of Transportation Interests

CONTRACTOR shall not divert any revenues, passengers or other business from CITY to any taxi or other transportation operation of CONTRACTOR.

15.3 Conflicting Use

CONTRACTOR shall not use any vehicle, equipment, personnel or other facilities which are dedicated to CITY for performing services under this AGREEMENT for any use whatsoever other than provided for in this AGREEMENT without the prior written approval of CITY.

15.4 Audit; Retention of Records

CONTRACTOR shall allow authorized representatives of CITY, the U.S. Department of Transportation, the Comptroller General of the United States, and the California State Controller's Office to inspect and audit all data and records of CONTRACTOR relating to performance under this AGREEMENT. Such audit shall be allowed upon reasonable notice to CONTRACTOR. Further, CONTRACTOR shall maintain all required records for three (3) years after final payment under this AGREEMENT and until all other pending matters are closed.

15.5 Compliance with Laws, Rules, Regulations

All services performed by CONTRACTOR pursuant to this AGREEMENT shall be performed in accordance and full compliance with all applicable federal, state, or local statutes, and any rules or regulations promulgated thereunder.

CONTRACTOR shall pay all taxes required to be paid by it by any applicable federal, state, or local statute, including the Business License Tax levied by CITY. Further, CONTRACTOR shall secure, on its own behalf, or on behalf of CITY if requested, any and all licenses and permits required by law to perform the services set forth in Exhibit A, Scope of Work. CONTRACTOR shall assure that all of its employees operating CITY vehicles possess a valid, current Class B California Driver License with appropriate endorsements.

CONTRACTOR shall not be required to obtain licenses for CITY owned or leased vehicles, for the CITY-provided facility, or any other CITY-provided equipment.

15.6 Liaison

Contractor shall assist and cooperate with CITY in meeting the objectives of providing quality public transportation services. CONTRACTOR shall perform close liaison activities, coordination and cooperation with CITY on matters related to transit operations, monitoring, reporting and service performance measurements.

15.7 Service Performance Measures

CITY and CONTRACTOR agree to a system of Service Performance Measures (Assessments and Incentives) included in Exhibit A, Scope of Work, to ensure the performance required under this AGREEMENT. CITY will deduct and/or add assessment and incentive amounts, as set forth in the Scope of Work, to monthly payments by CITY to CONTRACTOR.

15.8 Stop-Work

CITY may stop work on its transportation system upon forty-eight (48) hours of written notice to CONTRACTOR. CITY shall be liable for all relevant costs defined under Section 9 incurred prior to the stop-work period and for restart, if any.

15.9 Sale or Transfer

CONTRACTOR agrees that it will not sell, assign or transfer in whole or in part any right, title or interest it possesses by reason of this AGREEMENT to any other person or entity without first obtaining the written consent of CITY to such sale, assignment, or transfer. In the event of any violation of this Section 14.9, CITY may immediately terminate this AGREEMENT.

15.10 Binding

This AGREEMENT shall be binding on the assigns, transferees, successors, heirs, trustees, executors and administrators of the parties hereto.

15.11 Severability

In the event any provision of this AGREEMENT is declared or determined to be unlawful, invalid, or unconstitutional, such declaration shall not affect, in any manner, the legality of the remaining provisions of this AGREEMENT, and each provision of this AGREEMENT will be and is deemed to be separate and severable from each other provision.

15.12 Waiver/Jurisdiction/Venue

Neither CITY'S review, approval, or acceptance of payment for the services required under this AGREEMENT shall be construed to operate as a waiver of any rights under this AGREEMENT or of any cause of action arising out of the performance of this AGREEMENT, and CONTRACTOR shall be and remain liable to CITY in accordance with applicable law for all damages to CITY caused by CONTRACTOR negligent act, error or omission in the performance of any of the services furnished under this AGREEMENT. The PARTIES agree that CITY shall have the final authority to require the discharge by CONTRACTOR of any employee of CONTRACTOR performing services under this AGREEMENT. The waiver by CITY of any breach of any term, covenant, condition or AGREEMENT herein contained shall not be deemed to be a waiver of any subsequent breach of the same or of a breach of any other term, condition or agreement herein contained.

This AGREEMENT shall be governed by the laws of the State of California. Jurisdiction of litigation arising from this AGREEMENT shall be venued with the San Joaquin County Superior Court.

15.13 Dispute Resolution - Mediation

CITY and CONTRACTOR agree to mediate any dispute or claim arising between them out of this AGREEMENT or any resulting transaction before resorting to court action. Mediation is a process by which parties attempt to resolve a dispute or claim by submitting it to an impartial, neutral mediator, who is authorized to facilitate the resolution of the dispute, but who is not empowered to impose a settlement on the parties. Mediation fees, if any, shall be divided equally among the parties involved. Evidence of anything said, any admission made, and any document prepared, in the course of the mediation, shall not be admissible in evidence, or subject to discovery in any court action, pursuant to California Evidence Code §1152.5. IF ANY PARTY COMMENCES COURT ACTION BASED ON A DISPUTE OR CLAIM TO WHICH THIS PARAGRAPH APPLIES WITHOUT FIRST ATTEMPTING TO RESOLVE THE MATTER THROUGH MEDIATION, THEN IN THE DISCRETION OF THE COURT, THAT PARTY SHALL NOT BE ENTITLED TO RECOVER ATTORNEY'S FEES, EVEN IF THEY WOULD OTHERWISE BE AVAILABLE TO THAT PARTY IN ANY SUCH COURT ACTION.

15.14 Attorney's Fees

In the event any dispute between the PARTIES arises under or regarding this AGREEMENT, the prevailing party in any litigation of the dispute shall be entitled to an award of reasonable attorney's fees and costs incurred therein from the party that does not prevail, as determined by the San Joaquin County Superior Court.

15.15 Notice

All notices hereunder and communications with respect to this AGREEMENT shall be effected upon the mailing thereof of registered or certified mail return receipt requested and addressed as follows:

FOR CONTRACTOR:

MV Transportation, Inc.
4620 Westamerica Drive
Fairfield, CA 94534

ATTN: WC Pihl

FOR CITY:

CITY OF LODI
221 W. Pine Street
(P.O. Box 3006)
Lodi, CA 95240 (95241-1910)
ATTN: Public Works Director

15.16 Time of Performance

Time is of the essence in the performance of services under this AGREEMENT and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this AGREEMENT. CONTRACTOR shall commence performance on the Effective Date. Any services for which times for performance are not specified in this AGREEMENT shall be commenced and completed by CONTRACTOR in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the CONTRACTOR. CONTRACTOR shall submit all requests for time extensions to CITY's Transportation Manager in writing.

15.17 City Business License

CONTRACTOR acknowledges that Lodi Municipal Code Section 3.01.020 requires CONTRACTOR to obtain a city business license and CONTRACTOR agrees to secure such license prior to commencement of any work under this AGREEMENT, pay the appropriate fees, and keep such license in good standing at all times during the term of this AGREEMENT.

15.18 Shortages and Delays

CONTRACTOR shall not be held responsible for losses, delays, failure to perform, or excess costs caused by events beyond the control of CONTRACTOR. Such events may include, but are not limited to, the following: Acts of God (fire, epidemics, earthquake, flood, or other natural disaster); acts of government or public, riots, war, civil disorder, strikes, labor disputes or fuel shortages. However, CONTRACTOR shall not receive payment for the revenue vehicle mileage rate and only the mutually agreed direct and indirect monthly fee during the period of time that service is not provided. CONTRACTOR also grants CITY the right to provide these services through other means on a temporary basis should CONTRACTOR be unable to perform said services.

Section 15.19 Captions

The captions of the sections and subsections of this AGREEMENT are for convenience only and shall not be deemed to be relevant in resolving any question or interpretation or intent hereunder.

Section 15.20 Integration and Modification

This AGREEMENT represents the entire understanding of CITY and CONTRACTOR as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may not be modified or altered except in writing, signed by both the PARTIES.

Section 15.21 Contract Terms Prevail

All exhibits, the Request for Proposal dated February 1, 2012 (RFP) and this AGREEMENT are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this AGREEMENT, the attached exhibits, or the RFP, the terms of this AGREEMENT shall prevail.

Section 15.22 Authority

The undersigned hereby represent and warrant that they are authorized by the party they purport to represent to execute this AGREEMENT.

IN WITNESS WHEREOF, CITY and CONTRACTOR have executed this AGREEMENT as of the date first above written.

CITY OF LODI, a municipal corporation

CONTRACTOR

By: _____
KONRADT BARTLAM
City Manager

By: _____
Name:
Title:

ATTEST:

RANDI JOHL
City Clerk

APPROVED AS TO FORM:
D.STEPHEN SCHWABAUER, City Attorney
JANICE D. MAGDICH, Deputy City Attorney

By: _____ 

**Exhibits to be attached
prior to execution of contract**

RESOLUTION NO. 2012-_____

A RESOLUTION OF THE LODI CITY COUNCIL
AWARDING CONTRACT FOR FIXED ROUTE,
ADA PARATRANSIT, AND DEMAND RESPONSE
OPERATIONS FOR FISCAL YEARS
2012/13 TO 2014/15

=====

WHEREAS, in answer to notice duly published in accordance with law and the order of this City Council, sealed proposals were received and opened on March 12, 2012, for fixed route, ADA paratransit, and demand response operations, described in the request for proposals therefore distributed on February 1, 2012; and

WHEREAS, said proposals have been compared, checked, tabulated, and evaluated by an evaluation committee and a report thereof filed with the City Manager as follows:

| <u>Proposer</u> | <u>Rank</u> |
|-------------------------|-------------|
| MV Transportation, Inc. | 1 |
| Storer Transit Systems | 2 |

WHEREAS, the evaluation committee unanimously recommends award of the contract for fixed route, ADA paratransit, and demand response operations to MV Transportation, Inc., of Fairfield, California.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby award the contract for fixed route, ADA paratransit, and demand response operations for Fiscal Years 2012/13 to 2014/15 to MV Transportation, Inc., of Fairfield, California, in the amount of \$1,682,365 for Fiscal Year 2012/13; and

BE IT FURTHER RESOLVED that the City Council does hereby authorize the City Manager to execute the contract and up to two one-year contract extensions.

Dated: April 18, 2012

=====

I hereby certify that Resolution No. 2012-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held April 18, 2012, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk



TM

CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Authorizing City Manager to Execute Professional Services Agreement for Surface Water Treatment Plant Transition Management Services with Carollo Engineers, Inc., of Sacramento, and Appropriating Funds (\$203,900)

MEETING DATE: April 18, 2012

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt resolution authorizing City Manager to execute professional services agreement for Surface Water Treatment Plant transition management services with Carollo Engineers, Inc., of Sacramento, and appropriating funds in the amount of \$203,900.

BACKGROUND INFORMATION: Construction of the new Surface Water Treatment Plant is nearing completion, and based on the current schedule that includes membrane testing in late May 2012, these services should begin no later than May 1, 2012. Because of the advanced membrane technology and varying seasonal operating conditions, the plant will take an extended period of time to achieve normal optimized operation following the startup and commissioning. It is estimated to require two full years of operation to develop the operating procedures and staff experience for year-round optimization.

Staff recommends Carollo Engineers provide plant transition management services during this optimization period. Carollo Engineers has the necessary expertise and experience required to provide the California Department of Public Health mandated operator Pall membrane experience, as well as to develop procedures for the new plant, perform monitoring services, and provide ongoing technical assistance and training to plant staff. The agreement amount is \$203,900 and is for the term of May 1, 2012 through June 30, 2013.

FISCAL IMPACT: These services will result in stable operation and maintenance costs.

FUNDING AVAILABLE: Requested Appropriation:
Surface Water Treatment Plant Operations (180461): \$203,900

Jordan Ayers
Deputy City Manager/Internal Services Director

F. Wally Sandelin
Public Works Director

Prepared by Larry Parlin, Deputy Public Works Director – Utilities
FWS/LP/pmf

APPROVED: _____
Konradt Bartlam, City Manager

AGREEMENT FOR PROFESSIONAL SERVICES

ARTICLE 1 PARTIES AND PURPOSE

Section 1.1 Parties

THIS AGREEMENT is entered into on _____, 2012, by and between the CITY OF LODI, a municipal corporation (hereinafter "CITY"), and CAROLLO ENGINEERS, INC. (hereinafter "CONTRACTOR").

Section 1.2 Purpose

CITY selected the CONTRACTOR to provide the services required in accordance with attached Scope of Services, Exhibit A, attached and incorporated by this reference.

CITY wishes to enter into an agreement with CONTRACTOR for Surface Water Treatment Facility Transition Management Services (hereinafter "Project") as set forth in the Scope of Services attached here as Exhibit A. CONTRACTOR acknowledges that it is qualified to provide such services to CITY.

ARTICLE 2 SCOPE OF SERVICES

Section 2.1 Scope of Services

CONTRACTOR, for the benefit and at the direction of CITY, shall perform the Scope of Services as set forth in Exhibit A.

Section 2.2 Time For Commencement and Completion of Work

CONTRACTOR shall commence work pursuant to this Agreement, upon receipt of a written notice to proceed from CITY or on the date set forth in Section 2.6, whichever occurs first, and shall perform all services diligently and complete work under this Agreement based on a mutually agreed upon timeline or as otherwise designated in the Scope of Services.

CONTRACTOR shall submit to CITY such reports, diagrams, drawings and other work products as may be designated in the Scope of Services.

CONTRACTOR shall not be responsible for delays caused by the failure of CITY staff to provide required data or review documents within the appropriate time frames. The review time by CITY and any other agencies involved in the project shall not be

counted against CONTRACTOR's contract performance period. Also, any delays due to weather, vandalism, acts of God, etc., shall not be counted. CONTRACTOR shall remain in contact with reviewing agencies and make all efforts to review and return all comments.

Section 2.3 Meetings

CONTRACTOR shall attend meetings as may be set forth in the Scope of Services.

Section 2.4 Staffing

CONTRACTOR acknowledges that CITY has relied on CONTRACTOR's capabilities and on the qualifications of CONTRACTOR's principals and staff as identified in its proposal to CITY. The Scope of Services shall be performed by CONTRACTOR, unless agreed to otherwise by CITY in writing. CITY shall be notified by CONTRACTOR of any change of Project Manager and CITY is granted the right of approval of all original, additional and replacement personnel at CITY's sole discretion and shall be notified by CONTRACTOR of any changes of CONTRACTOR's project staff prior to any change.

CONTRACTOR represents it is prepared to and can perform all services within the Scope of Services (Exhibit A) and is prepared to and can perform all services specified therein. CONTRACTOR represents that it has, or will have at the time this Agreement is executed, all licenses, permits, qualifications, insurance and approvals of whatsoever nature are legally required for CONTRACTOR to practice its profession, and that CONTRACTOR shall, at its own cost and expense, keep in effect during the life of this Agreement all such licenses, permits, qualifications, insurance and approvals, and shall indemnify, defend and hold harmless CITY against any costs associated with such licenses, permits, qualifications, insurance and approvals which may be imposed against CITY under this Agreement.

Section 2.5 Subcontracts

Unless prior written approval of CITY is obtained, CONTRACTOR shall not enter into any subcontract with any other party for purposes of providing any work or services covered by this Agreement.

Section 2.6 Term

The term of this Agreement commences on May 1, 2012 and terminates upon the completion of the Scope of Services or on June 30, 2013, whichever occurs first.

ARTICLE 3 **COMPENSATION**

Section 3.1 Compensation

CONTRACTOR's compensation for all work under this Agreement shall conform to the provisions of the Fee Proposal, attached hereto as Exhibit B and incorporated by this reference.

CONTRACTOR shall not undertake any work beyond the scope of this Agreement unless such additional work is approved in advance and in writing by CITY.

Section 3.2 Method of Payment

CONTRACTOR shall submit invoices for completed work on a monthly basis, or as otherwise agreed, providing, without limitation, details as to amount of hours, individual performing said work, hourly rate, and indicating to what aspect of the Scope of Services said work is attributable. CONTRACTOR's compensation for all work under this Agreement shall not exceed the amount of the Fee Proposal.

Section 3.3 Costs

The Fee Proposal shall include all reimbursable costs required for the performance of the Scope of Services. Payment of additional reimbursable costs considered to be over and above those inherent in the original Scope of Services shall be approved in advanced and in writing, by CITY.

Section 3.4 Auditing

CITY reserves the right to periodically audit all charges made by CONTRACTOR to CITY for services under this Agreement. Upon request, CONTRACTOR agrees to furnish CITY, or a designated representative, with necessary information and assistance needed to conduct such an audit.

CONTRACTOR agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of this Agreement. CONTRACTOR agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. CONTRACTOR further agrees to maintain such records for a period of three (3) years after final payment under this Agreement.

ARTICLE 4
MISCELLANEOUS PROVISIONS

Section 4.1 Nondiscrimination

In performing services under this Agreement, CONTRACTOR shall not discriminate in the employment of its employees or in the engagement of any sub CONTRACTOR on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, age, or any other criteria prohibited by law.

Section 4.2 ADA Compliance

In performing services under this Agreement, CONTRACTOR shall comply with the Americans with Disabilities Act (ADA) of 1990, and all amendments thereto, as well as all applicable regulations and guidelines issued pursuant to the ADA.

Section 4.3 Indemnification and Responsibility for Damage

CONTRACTOR to the fullest extent permitted by law, shall indemnify and hold harmless CITY, its elected and appointed officials, directors, officers, employees and volunteers from and against any claims, damages, losses, and expenses (including reasonable attorney's fees), arising out of performance of the services to be performed under this Agreement, provided that any such claim, damage, loss, or expense is caused by the negligent acts, errors or omissions of CONTRACTOR, any subcontractor employed directly by CONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, except those injuries or damages arising out of the active negligence of the City of Lodi or its officers or agents.

Section 4.4 No Personal Liability

Neither the City Council, nor any other officer or authorized assistant or agent or City employee shall be personally responsible for any liability arising under this Agreement.

Section 4.5 Responsibility of CITY

CITY shall not be held responsible for the care or protection of any material or parts of the work described in the Scope of Services prior to final acceptance by CITY, except as expressly provided herein.

Section 4.6 Insurance Requirements for CONTRACTOR

CONTRACTOR shall take out and maintain during the life of this Agreement, insurance coverage as set forth in Exhibit C attached hereto and incorporated by this reference.

Section 4.7 Successors and Assigns

CITY and CONTRACTOR each bind themselves, their partners, successors, assigns, and legal representatives to this Agreement without the written consent of the others. CONTRACTOR shall not assign or transfer any interest in this Agreement without the prior written consent of CITY. Consent to any such transfer shall be at the sole discretion of CITY.

Section 4.8 Notices

Any notice required to be given by the terms of this Agreement shall be in writing signed by an authorized representative of the sender and shall be deemed to have been given when the same is personally served or upon receipt by express or overnight delivery, postage prepaid, or three (3) days from the time of mailing if sent by first class or certified mail, postage prepaid, addressed to the respective parties as follows:

To CITY: City of Lodi
 221 West Pine Street
 P.O. Box 3006
 Lodi, CA 95241-1910
 Attn: Larry Parlin

To CONTRACTOR: Carollo Engineers, Inc.
 2880 Gateway Oaks Drive, Suite 300
 Sacramento, CA 95833
 Attn: Kathy Marks

Section 4.9 Cooperation of CITY

CITY shall cooperate fully and in a timely manner in providing relevant information it has at its disposal relevant to the Scope of Services.

Section 4.10 CONTRACTOR is Not an Employee of CITY

CONTRACTOR agrees that in undertaking the duties to be performed under this Agreement, it shall act as an independent contractor for and on behalf of CITY and not an employee of CITY. CITY shall not direct the work and means for accomplishment of the services and work to be performed hereunder. CITY, however, retains the right to require that work performed by CONTRACTOR meet specific standards without regard to the manner and means of accomplishment thereof.

Section 4.11 Termination

CITY may terminate this Agreement, with or without cause, by giving CONTRACTOR at least ten (10) days written notice. Where phases are anticipated within the Scope of Services, at which an intermediate decision is required concerning whether to proceed further, CITY may terminate at the conclusion of any such phase.

Upon termination, CONTRACTOR shall be entitled to payment as set forth in the attached Exhibit B to the extent that the work has been performed. Upon termination, CONTRACTOR shall immediately suspend all work on the Project and deliver any documents or work in progress to CITY. However, CITY shall assume no liability for costs, expenses or lost profits resulting from services not completed or for contracts entered into by CONTRACTOR with third parties in reliance upon this Agreement.

Section 4.12 Confidentiality

CONTRACTOR agrees to maintain confidentiality of all work and work products produced under this Agreement, except to the extent otherwise required by law or permitted in writing by CITY. CITY agrees to maintain confidentiality of any documents owned by CONTRACTOR and clearly marked by CONTRACTOR as "Confidential" or "Proprietary", except to the extent otherwise required by law or permitted in writing by CONTRACTOR. CONTRACTOR acknowledges that CITY is subject to the California Public Records Act.

Section 4.13 Applicable Law, Jurisdiction, Severability, and Attorney's Fees

This Agreement shall be governed by the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be venued with the San Joaquin County Superior Court. If any part of this Agreement is found to conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in force and effect. In the event any dispute between the parties arises under or regarding this Agreement, the prevailing party in any litigation of the dispute shall be entitled to reasonable attorney's fees from the party who does not prevail as determined by the San Joaquin County Superior Court.

Section 4.14 City Business License Requirement

CONTRACTOR acknowledges that Lodi Municipal Code Section 3.01.020 requires CONTRACTOR to have a city business license and CONTRACTOR agrees to secure such license and pay the appropriate fees prior to performing any work hereunder.

Section 4.15 Captions

The captions of the sections and subsections of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question or interpretation or intent hereunder.

Section 4.16 Integration and Modification

This Agreement represents the entire understanding of CITY and CONTRACTOR as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing, signed by both parties.

Section 4.17 Contract Terms Prevail

All exhibits and this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and the attached exhibits, the terms of this Agreement shall prevail.

Section 4.18 Severability

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

Section 4.19 Ownership of Documents

All documents, photographs, reports, analyses, audits, computer media, or other material documents or data, and working papers, whether or not in final form, which have been obtained or prepared under this Agreement, shall be deemed the property of CITY. Upon CITY's request, CONTRACTOR shall allow CITY to inspect all such documents during CONTRACTOR's regular business hours. Upon termination or completion of services under this Agreement, all information collected, work product and documents shall be delivered by CONTRACTOR to CITY within ten (10) calendar days.

CITY agrees to indemnify, defend and hold CONTRACTOR harmless from any liability resulting from CITY's use of such documents for any purpose other than the purpose for which they were intended.

Section 4.20 Authority

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Agreement.

Section 4.21 Federal Transit Funding Conditions

☐ If the box at left is checked, the Federal Transit Funding conditions attached as Exhibit apply to this contract. In the event of a conflict between the terms of this contract or any of its other exhibits, and the Federal Transit Funding Conditions, the Federal Transit Funding Conditions will control.

IN WITNESS WHEREOF, CITY and CONTRACTOR have executed this Agreement as of the date first above written.

CITY OF LODI, a municipal corporation


ATTEST:

RANDI JOHL
City Clerk

KONRADT BARTLAM, City Manager

APPROVED AS TO FORM:
D. STEPHEN SCHWABAUER, City Attorney
JANICE D. MAGDICH, Deputy City Attorney

CONTRACTOR: Carollo Engineers, Inc.

By: _____


By: _____
Name:
Title:

Attachments:
Exhibit A – Scope of Services
Exhibit B – Fee Proposal
Exhibit C – Insurance Requirements

Funding Source: 180461
(Business Unit & Account No.)

Doc ID: Projects\Water\SWTF\PSA CarolloEngineers

CA:rev.01.2012

**City of Lodi
Surface Water Treatment Facility
Transition Management Services**

SCOPE OF SERVICES

INTRODUCTION

The City of Lodi is completing the construction of a new surface water treatment plant (SWTP) which will be using Pall Membranes to treat Mokelumne River water for domestic use. The SWTP was designed by HDR who is providing the engineering services during construction including the O&M Manual. The California Department of Public Health has told the City that they want operator staffing with Pall experience running this SWTP. A new supervisory control and data acquisition (SCADA) system will be implemented at the SWTP and will replace the existing well monitoring and control system. The City has requested that Carollo Engineers provide an engineer who has Pall experience to assist with the startup, training, and optimization of the SWTP.

The City has hired a chief operator and will hire four new operators and one electrician/instrumentation technician. The City will need assistance to determine the best way to get laboratory testing completed, heavy maintenance completed and SCADA maintenance completed.

The new SCADA system will control the existing wells and their new hypochlorite feed from plant. The system will also have to work with the 3 million gallon storage reservoir and use the City's water rights. The City has 1,000 acre feet (AF) of pre 1914 water rights consisting of 1,000 AF from October through March and 5,000 AF from March through October. In addition, the City has 1,000 to 2,000 AF of purchased water banked over the past 8 years that will have to be tracked and managed.

The SWTP construction contractor (Overaa) plans to start plant testing in July and turn the plant over to the City in August. Overaa appears to be on schedule. Based on this schedule the City would like these startup services to start no later than May 1, 2012.

It is understood by all parties that after startup, the SWTP will take several years to bring to normal optimized operation. This will include:

- Modifications to overcome supplied equipment deficiencies and issues that cannot be resolved during construction.
- Process optimization to produce best quality water, which will have to be determined based on plant actual treatment process performance.
- If the plant treatment process is direct filtration with Pall micro filtration (MF), it may require more MF optimization to produce better system availability (e.g., minimize cleanings and downtime). MF permeate quality is independent from raw water quality
- If there is a pretreatment process unit upstream of Pall MF, it may be worth optimizing it. For example, producing 2 NTU water with a clarifier upstream of the membranes is not necessary. 5 NTU won't make a difference and coagulant could be saved.
- Optimization to minimize staffing, electrical and chemical consumption

SCOPE OF SERVICES

The following listed tasks provide a laundry list of items that will require varying degrees of assistance depending on the staff availabilities and capabilities. The hours and fees for each of these tasks are estimates that will be adjusted between the tasks based on direction from staff.

- A. Assist to Develop Required Staff and Define Outsourced Activities
 - a. Have Chief Operator
 - b. About to hire operators
 - c. Will hire Electrician/Instrumentation
 - d. Need to determine how lab work will be done, develop testing schedules and lab contracts for external analysis , and implement
 - e. Need to determine how heavy maintenance will be done, and implement
 - f. Need to determine how SCADA maintenance will be done, and implement
- B. Assist in Developing Standard Operating Procedures (SOP)
 - a. Use HDR O&M and Operations Plan to develop
 - b. Use Pall Manuals to develop
 - c. Meet Regulatory Standards
- C. Performance Monitoring (Assist in Meeting Requirements to Maintain Warranties)
 - a. Procedures to Maintain membranes
 - i. Normalized permeability - this is a very important consideration. Permeability is an intrinsic characteristic of the membrane. When normalized (e.g., typically at 20 deg C) and monitored; it allows the operation staff to control the status of the membrane independently from the operations parameters. Feed pressure or transmembrane pressure may vary with water temperature and flow. The approach allows the operations staff to be proactive instead of being reactive, which means lower risk of being short in capacity because of a dirty membrane.
 - ii. Flushing
 - iii. Chemical Cleaning
 - 1. Backwash or reverse flow (RF)
 - 2. Forward flushing (FF)
 - 3. Maintenance Clean (Chemically Enhanced Backwash)
 - 4. Full Blown Cleaning (Clean-In-Place)
 - b. Review water quality data and operating data for the MF system every month
 - i. Monthly review
 - ii. Report deviations from expected performance immediately
 - c. Attend quarterly meetings to discuss current status of the MF membranes
 - d. Document the condition of the MF system quarterly
- D. Assist in Developing Maintenance Procedures
 - a. Assist staff to select a computerized maintenance management system (CMMS)
 - b. Assist staff to input equipment into CMMS
 - c. Implement and optimize the maintenance management
- E. Operator Training – Formal classroom and “Hands-on” field training
 - a. Operations
 - b. Maintenance
 - c. Instrumentation

- d. Control system
 - e. Laboratory
- F. Set Up Facility Testing and Acceptance Plan
 - a. Testing for plant performance
 - b. Laboratory sampling and analysis
 - c. Process control
- G. Technical Assistance to Regulatory Issues (CDPH) and Operations
 - a. Help develop plant regulatory submittals:
 - i. Operational Plan – in HDR scope
 - ii. Prepare a Stage 2 DBP Monitoring Plan for our distribution system
 - iii. Validation of Pressure Decay Integrity Testing. CDPH may require it before allowing the City to send the finished water to the distribution system.
 - iv. Disinfection (CT) basin tracer study
 - b. Submittal will be through City Management
 - c. Troubleshooting deviations from expected performance
 - d. Respond to questions from operating staff and City management
 - e. Advise the City on membrane replacement needs and schedules
 - f. Provide guidance on the development of improved membrane cleaning procedures
- H. SCADA Programming
 - a. Provide Wonderware programming of the SCADA system to:
 - i. Assist with the integration of plant, wells, well head treatment
 - ii. Assist to develop a control system to use available surface water based on water rights
 - iii. Assist to set up and format reports for operation and CDPH
 - iv. Revise displays to provide needed information
 - v. adjust controls for minor equipment and instrument modifications needed
- I. Project Management
 - a. Provide a monthly invoice and progress report
 - b. Coordinate staffing with project and City staff availability
 - c. Coordinate quality assurance and documentation

EXHIBIT B
City of Lodi
Transition Management Services
Cost Proposal



| Task Description | Hours by Classification | | | | | | | | Estimated Costs | | | | |
|--|-------------------------|----------------------------|---------------------------|----------------------|--------------------|-----------------------|--------------------------------|-------------|----------------------------|-----------------|-----------------|--|-------------------|
| | Senior Professional | Senior Professional | Lead Project Professional | Senior Programmer | Programmer | Senior Technicians | Document Processing / Clerical | Total Hours | Labor Costs ⁽¹⁾ | PECE | Travel | Subs and Other Expenses ⁽²⁾ | Estimated Fee |
| <u>Estimated 2012 Rates</u> | Bob Gillette \$249 | Vincent Roquebert \$249 | Bradley Sessions \$230 | Jeff Janowiak 170 | Mark Weston 160 | Fee Schedule \$151 | Fee Schedule \$96 | | | PECE 9.50 | Other | | |
| <u>Task A</u> Assist to Develop Staff and Define Outsourced Activities | | 8 | 16 | | | | | 24 | \$ 5,670 | \$ 228 | | \$ 200 | \$ 5,900 |
| <u>Task B</u> Assist to develop SOPs | | 40 | 40 | | | | 8 | 88 | \$ 19,930 | \$ 836 | \$ 1,100 | \$ 1,900 | \$ 21,800 |
| <u>Task C</u> Performance Monitoring | | 48 | 96 | | | | 24 | 168 | \$ 36,340 | \$ 1,596 | \$ 1,100 | \$ 2,700 | \$ 39,000 |
| <u>Task D</u> Assist in Developing Maintenance Procedures | | 8 | 24 | | | | 2 | 34 | \$ 7,700 | \$ 323 | \$ 1,100 | \$ 1,400 | \$ 9,100 |
| <u>Task E</u> Operator Training | | 48 | 80 | 16 | | 16 | 16 | 176 | \$ 37,020 | \$ 1,672 | \$ 2,600 | \$ 4,300 | \$ 41,300 |
| <u>Task F</u> Set Up Facility Testing and Acceptance Plan | | 40 | 40 | | | | 2 | 82 | \$ 19,350 | \$ 779 | \$ 2,100 | \$ 2,900 | \$ 22,300 |
| <u>Task G</u> Technical Assistance to Regulatory Issues and Operations | | 40 | 40 | | | | 8 | 88 | \$ 19,930 | \$ 836 | \$ 500 | \$ 1,300 | \$ 21,200 |
| <u>Task H</u> SCADA Programming | | | 8 | 60 | 120 | | | 188 | \$ 31,240 | \$ 1,786 | \$ 1,000 | \$ 2,800 | \$ 34,000 |
| <u>Task I</u> Project Management | 12 | 24 | | | | | | 36 | \$ 8,960 | \$ 342 | | \$ 300 | \$ 9,300 |
| Total Hours and Fee | 12 | 256 | 344 | 76 | 120 | 16 | 60 | 884 | \$ 186,140 | \$ 8,398 | \$ 9,500 | \$ 17,800 | \$ 203,900 |

Notes:

(1) Hourly billing rates of personnel are based on the estimated March 2012 Carollo fee schedule.

(2) Other Expenses includes PECE at \$9.50 per hour, and travel expenses.

Dated: March 27, 2012



Exhibit C

Insurance Requirements for Contractor The Contractor shall take out and maintain during the life of this contract, insurance coverage as listed below. These insurance policies shall protect the Contractor and any subcontractor performing work covered by this contract from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from Contractor's operations under this contract, whether such operations be by Contractor or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amount of such insurance shall be as follows:

- | | |
|---|--|
| 1. <u>COMPREHENSIVE GENERAL LIABILITY</u> | 2. <u>COMPREHENSIVE AUTOMOBILE LIABILITY</u> |
| \$2,000,000 Ea. Occurrence | \$1,000,000 Bodily Injury - Ea. Person |
| | \$1,000,000 Bodily Injury - Ea. Occurrence |
| \$2,000,000 Aggregate | \$1,000,000 Property Damage - Ea. Occurrence |
| 3. <u>ERRORS AND OMISSIONS LIABILITY</u> | |
| \$1,000,000 Ea. Occurrence | |

NOTE: Contractor agrees and stipulates that any insurance coverage provided to the City of Lodi shall provide for a claims period following termination of coverage which is at least consistent with the claims period or statutes of limitations found in the California Tort Claims Act (California Government Code Section 810 et seq.).

A copy of the certificate of insurance with the following endorsements shall be furnished to the City:

(a) **Additional Named Insured Endorsement**

Such insurance as is afforded by this policy shall also apply to the City of Lodi, its elected and appointed Boards, Commissions, Officers, Agents, Volunteers and Employees as additional named insureds.

(This endorsement shall be on a form furnished to the City and shall be included with Contractor's policies.)

(b) **Primary Insurance Endorsement**

Such insurance as is afforded by the endorsement for the Additional Insureds shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the insurance afforded by this endorsement.

NOTE: (1) The street address of the **CITY OF LODI** must be shown along with (a) and (b) above: 221 West Pine Street, Lodi, California, 95241-1910; (2) The insurance certificate must state, on its face or as an endorsement, a description of the project that it is insuring.

(c) **Severability of Interest Clause**

The term "insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limit of the company's liability.

(d) **Notice of Cancellation or Change in Coverage Endorsement**

This policy may not be canceled nor the coverage reduced by the company without 30 days' prior written notice of such cancellation or reduction in coverage to the Risk Manager, City of Lodi, 221 W. Pine St., Lodi, CA 95240.

Compensation Insurance The Contractor shall take out and maintain during the life of this contract, Worker's Compensation Insurance for all of Contractor's employees employed at the site of the project and, if any work is sublet, Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in hazardous work under this contract at the site of the project is not protected under the Worker's Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide insurance for the protection of said employees. This policy may not be canceled nor the coverage reduced by the company without 30 days' prior written notice of such cancellation or reduction in coverage to the Risk Manager, City of Lodi, 221 W. Pine St., Lodi, CA 95240.

NOTE: No contract agreement will be signed nor will **any** work begin on a project until the proper insurance certificate is received by the Public Works Department. **Please be sure your insurance company sends this certificate to the attention of the Public Works Department.**

1. AA# _____
2. JV# _____

CITY OF LODI APPROPRIATION ADJUSTMENT REQUEST

TO: Internal Services Dept. - Budget Division
3. FROM: Rebecca Areida-Yadav 5. DATE: 03/28/2012
4. DEPARTMENT/DIVISION: Public Works

6. REQUEST ADJUSTMENT OF APPROPRIATION AS LISTED BELOW

| | FUND # | BUS. UNIT # | ACCOUNT # | ACCOUNT TITLE | AMOUNT |
|------------------------------|--------|-------------|-----------|-------------------------------|---------------|
| A. SOURCE OF FINANCING | 180 | | 3205 | Fund Balance | \$ 203,900.00 |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| B. USE OF FINANCING | 180 | 180461 | 7323 | Surface Water Treatment Plant | \$ 203,900.00 |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

7. REQUEST IS MADE TO FUND THE FOLLOWING PROJECT NOT INCLUDED IN THE CURRENT BUDGET

Please provide a description of the project, the total cost of the project, as well as justification for the requested adjustment. If you need more space, use an additional sheet and attach to this form.

Professional Services Agreement with Carollo Engineers for transition management services for the Surface Water Treatment Plant.

If Council has authorized the appropriation adjustment, complete the following:

Meeting Date: _____ Res No: _____ Attach copy of resolution to this form.

Department Head Signature: Wally Sander

8. APPROVAL SIGNATURES

Deputy City Manager/Internal Services Manager _____ Date _____

Submit completed form to the Budget Division with any required documentation.
Final approval will be provided in electronic copy format.

RESOLUTION NO. 2012-_____

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING CITY MANAGER TO EXECUTE
PROFESSIONAL SERVICES AGREEMENT FOR
SURFACE WATER TREATMENT FACILITY
TRANSITION MANAGEMENT SERVICES AND
FURTHER APPROPRIATING FUNDS

=====

WHEREAS, the construction of the new Surface Water Treatment Plant is nearing completion, and based on the current schedule, these services should begin no later than May 1, 2012; and

WHEREAS, because of the advanced membrane technology and varying seasonal operating conditions, the plant will take an extended period of time to achieve normal optimized operation following the startup and commissioning; and

WHEREAS, staff recommends having Carollo Engineers, Inc., of Sacramento, perform plant transition management services during this optimization period, as it has the necessary expertise and experience required to provide the California Department of Public Health mandated operator Pall membrane experience, as well as to develop procedures for the new plant, perform monitoring services, and provide ongoing technical assistance and training to plant staff.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute a professional services agreement for Surface Water Treatment Facility transition management services with Carollo Engineers, Inc., of Sacramento, California, in the amount of \$203,900; and

BE IT FURTHER RESOLVED that funds in the amount of \$203,900 be appropriated from Surface Water Treatment Plant Operations funds.

Dated: April 18, 2012

=====

I hereby certify that Resolution No. 2012-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held April 18, 2012, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk



CITY OF LODI COUNCIL COMMUNICATION

TM

AGENDA TITLE: Adopt Resolution Authorizing City Manager to Execute Amendment to Professional Services Agreement for Design Services for Grape Bowl Stadium with Siegfried Engineering, Inc., of Stockton, (\$17,800) and Appropriating Funds (\$20,000)

MEETING DATE: April 18, 2012

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt resolution authorizing City Manager to execute amendment to professional services agreement for design services for Grape Bowl stadium with Siegfried Engineering, Inc., of Stockton, in the amount of \$17,800 and appropriating funds in the amount of \$20,000.

BACKGROUND INFORMATION: On March 21, 2012, City Council approved a professional services agreement with Siegfried Engineering in the amount of \$21,700 to design the Phase 3 Grape Bowl Improvement Project. The Phase 3 improvement project includes construction of ADA-accessible ramp to the south-side upper concourse only, ADA seating at the south-side upper concourse, restrooms, concession, ticket booth, scoreboard, landscape, irrigation and related appurtenant facilities.

The Siegfried Engineering scope of work that was approved included design documents and construction cost estimates for the scoreboard, plaza, utilities, ADA-accessible ramps to the south-side upper concourse and ADA seating at the upper concourse but did not include the design of the restrooms, concession, and ticket booth building.

Staff proposes to construct the restrooms, concessions, and ticket booth building using a design build method and recommends adding the task of preparing the construction documents to the Siegfried Engineering scope of work. The term of the agreement will be extended through the anticipated end of construction (June 1, 2013).

It is recommended Council authorize the City Manager to execute an amendment to the professional services agreement with Siegfried Engineering for preparing the design build construction documents for the Grape Bowl restrooms, concession and ticket booth building.

FISCAL IMPACT: The amendment will increase the total cost of the Phase 3 improvements project by approximately \$20,000.

FUNDING AVAILABLE: Requested Appropriation:
Parks and Recreation Capital Outlay Fund (1212): \$20,000

Jordan Ayers
Deputy City Manager/Internal Services Director

F. Wally Sandelin
Public Works Director

Prepared by Charles E. Swimley, Jr., City Engineer/Deputy Public Works Director
FWS/CES/pmf

APPROVED: _____
Konradt Bartlam, City Manager

AMENDMENT NO. 1

Siegfried Engineering, Inc.
Professional Services Agreement

THIS AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT, is made and entered this ____ day of April, 2012, by and between the CITY OF LODI, a municipal corporation (hereinafter "CITY"), and SIEGFRIED ENGINEERING, INC. (hereinafter "CONSULTANT").

WITNESSETH:

1. WHEREAS, CONSULTANT and CITY entered into a Professional Services Agreement (Agreement) on March 28, 2012, as set forth in Exhibit 1 (attached).
2. WHEREAS, CITY requested to amend said Agreement as set forth in Exhibits 2 (Scope of Service) and 3 (Fee Schedule) (attached) and extending the term to June 1, 2013; and
3. WHEREAS, CONSULTANT agrees to said amendment;

NOW, THEREFORE, the parties agree to amend the Scope of Services, Fee, and Term as set forth in the Agreement as Exhibits 1, 2, and 3, respectively.

IN WITNESS WHEREOF, CITY and CONSULTANT have executed this Amendment No. 1 on _____, 2012.

CITY OF LODI, a municipal corporation
Hereinabove called "CITY"

SIEGFRIED ENGINEERING, INC.
Hereinabove called "CONSULTANT"

KONRADT BARTLAM
City Manager

Name:
Title:

Attest:

RANDI JOHL, City Clerk

Approved as to Form:

D. STEPHEN SCHWABAUER
City Attorney

AGREEMENT FOR PROFESSIONAL SERVICES

ARTICLE 1 PARTIES AND PURPOSE

Section 1.1 Parties

THIS AGREEMENT is entered into on March 28, 2012, by and between the CITY OF LODI, a municipal corporation (hereinafter "CITY"), and SIEGFRIED ENGINEERING (hereinafter "CONSULTANT").

Section 1.2 Purpose

CITY selected the CONSULTANT to provide the services required in accordance with attached Scope of Services, Exhibit A, attached and incorporated by this reference.

CITY wishes to enter into an agreement with CONSULTANT for structural engineering services for proposed Lodi Grape Bowl accessibility improvements (hereinafter "Project") as set forth in the Scope of Services attached here as Exhibit A. CONSULTANT acknowledges that it is qualified to provide such services to CITY.

ARTICLE 2 SCOPE OF SERVICES

Section 2.1 Scope of Services

CONSULTANT, for the benefit and at the direction of CITY, shall perform the Scope of Services as set forth in Exhibit A.

Section 2.2 Time For Commencement and Completion of Work

CONSULTANT shall commence work pursuant to this Agreement, upon receipt of a written notice to proceed from CITY or on the date set forth in Section 2.6, whichever occurs first, and shall perform all services diligently and complete work under this Agreement based on a mutually agreed upon timeline or as otherwise designated in the Scope of Services.

CONSULTANT shall submit to CITY such reports, diagrams, drawings and other work products as may be designated in the Scope of Services.

CONSULTANT shall not be responsible for delays caused by the failure of CITY staff to provide required data or review documents within the appropriate time frames. The review time by CITY and any other agencies involved in the project shall not be counted against CONSULTANT's contract performance period. Also, any delays due to weather, vandalism, acts of God, etc., shall not be counted. CONSULTANT shall

remain in contact with reviewing agencies and make all efforts to review and return all comments.

Section 2.3 Meetings

CONSULTANT shall attend meetings as may be set forth in the Scope of Services.

Section 2.4 Staffing

CONSULTANT acknowledges that CITY has relied on CONSULTANT's capabilities and on the qualifications of CONSULTANT's principals and staff as identified in its proposal to CITY. The Scope of Services shall be performed by CONSULTANT, unless agreed to otherwise by CITY in writing. CITY shall be notified by CONSULTANT of any change of Project Manager and CITY is granted the right of approval of all original, additional and replacement personnel at CITY's sole discretion and shall be notified by CONSULTANT of any changes of CONSULTANT's project staff prior to any change.

CONSULTANT represents it is prepared to and can perform all services within the Scope of Services (Exhibit A) and is prepared to and can perform all services specified therein. CONSULTANT represents that it has, or will have at the time this Agreement is executed, all licenses, permits, qualifications, insurance and approvals of whatsoever nature are legally required for CONSULTANT to practice its profession, and that CONSULTANT shall, at its own cost and expense, keep in effect during the life of this Agreement all such licenses, permits, qualifications, insurance and approvals, and shall indemnify, defend and hold harmless CITY against any costs associated with such licenses, permits, qualifications, insurance and approvals which may be imposed against CITY under this Agreement.

Section 2.5 Subcontracts

Unless prior written approval of CITY is obtained, CONSULTANT shall not enter into any subcontract with any other party for purposes of providing any work or services covered by this Agreement.

Section 2.6 Term

The term of this Agreement commences on April 1, 2012 and terminates upon the completion of the Scope of Services or on August 31, 2012, whichever occurs first.

ARTICLE 3 **COMPENSATION**

Section 3.1 Compensation

CONSULTANT's compensation for all work under this Agreement shall conform to the provisions of the Fee Proposal, attached hereto as Exhibit B and incorporated by this reference.

CONSULTANT shall not undertake any work beyond the scope of this Agreement unless such additional work is approved in advance and in writing by CITY.

Section 3.2 Method of Payment

CONSULTANT shall submit invoices for completed work on a monthly basis, or as otherwise agreed, providing, without limitation, details as to amount of hours, individual performing said work, hourly rate, and indicating to what aspect of the Scope of Services said work is attributable. CONSULTANT's compensation for all work under this Agreement shall not exceed the amount of the Fee Proposal.

Section 3.3 Costs

The Fee Proposal shall include all reimbursable costs required for the performance of the Scope of Services. Payment of additional reimbursable costs considered to be over and above those inherent in the original Scope of Services shall be approved in advanced and in writing, by CITY.

Section 3.4 Auditing

CITY reserves the right to periodically audit all charges made by CONSULTANT to CITY for services under this Agreement. Upon request, CONSULTANT agrees to furnish CITY, or a designated representative, with necessary information and assistance needed to conduct such an audit.

CONSULTANT agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of this Agreement. CONSULTANT agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. CONSULTANT further agrees to maintain such records for a period of three (3) years after final payment under this Agreement.

ARTICLE 4
MISCELLANEOUS PROVISIONS

Section 4.1 Nondiscrimination

In performing services under this Agreement, CONSULTANT shall not discriminate in the employment of its employees or in the engagement of any sub CONSULTANT on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, age, or any other criteria prohibited by law.

Section 4.2 ADA Compliance

In performing services under this Agreement, CONSULTANT shall comply with the Americans with Disabilities Act (ADA) of 1990, and all amendments thereto, as well as all applicable regulations and guidelines issued pursuant to the ADA.

Section 4.3 Indemnification and Responsibility for Damage

CONSULTANT to the fullest extent permitted by law, shall indemnify and hold harmless CITY, its elected and appointed officials, directors, officers, employees and volunteers from and against any claims, damages, losses, and expenses (including reasonable attorney's fees), arising out of performance of the services to be performed under this Agreement, provided that any such claim, damage, loss, or expense is caused by the sole negligent acts, errors or omissions of CONSULTANT, any subcontractor employed directly by CONSULTANT, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, except those injuries or damages arising out of the active negligence of the City of Lodi or its officers or agents.

Section 4.4 No Personal Liability

Neither the City Council, nor any other officer or authorized assistant or agent or City employee shall be personally responsible for any liability arising under this Agreement.

Section 4.5 Responsibility of CITY

CITY shall not be held responsible for the care or protection of any material or parts of the work described in the Scope of Services prior to final acceptance by CITY, except as expressly provided herein.

Section 4.6 Insurance Requirements for CONSULTANT

CONSULTANT shall take out and maintain during the life of this Agreement, insurance coverage as set forth in Exhibit C attached hereto and incorporated by this reference.

Section 4.7 Successors and Assigns

CITY and CONSULTANT each bind themselves, their partners, successors, assigns, and legal representatives to this Agreement without the written consent of the others. CONSULTANT shall not assign or transfer any interest in this Agreement without the prior written consent of CITY. Consent to any such transfer shall be at the sole discretion of CITY.

Section 4.8 Notices

Any notice required to be given by the terms of this Agreement shall be in writing signed by an authorized representative of the sender and shall be deemed to have been given when the same is personally served or upon receipt by express or overnight delivery, postage prepaid, or three (3) days from the time of mailing if sent by first class or certified mail, postage prepaid, addressed to the respective parties as follows:

To CITY: City of Lodi
221 West Pine Street
P.O. Box 3006
Lodi, CA 95241-1910
Attn: Wally Sandelin, Public Works Director

To CONSULTANT: Siegfried Engineering
3244 Brookside Road, Ste. 100
Stockton, CA 95219
Attn: Anthony J. Lopes, President

Section 4.9 Cooperation of CITY

CITY shall cooperate fully and in a timely manner in providing relevant information it has at its disposal relevant to the Scope of Services.

Section 4.10 CONSULTANT is Not an Employee of CITY

CONSULTANT agrees that in undertaking the duties to be performed under this Agreement, it shall act as an independent CONSULTANT for and on behalf of CITY and not an employee of CITY. CITY shall not direct the work and means for accomplishment of the services and work to be performed hereunder. CITY, however, retains the right to require that work performed by CONSULTANT meet specific standards without regard to the manner and means of accomplishment thereof.

Section 4.11 Termination

CITY may terminate this Agreement, with or without cause, by giving CONSULTANT at least ten (10) days written notice. Where phases are anticipated within the Scope of Services, at which an intermediate decision is required concerning

whether to proceed further, CITY may terminate at the conclusion of any such phase. Upon termination, CONSULTANT shall be entitled to payment as set forth in the attached Exhibit B to the extent that the work has been performed. Upon termination, CONSULTANT shall immediately suspend all work on the Project and deliver any documents or work in progress to CITY. However, CITY shall assume no liability for costs, expenses or lost profits resulting from services not completed or for contracts entered into by CONSULTANT with third parties in reliance upon this Agreement.

Section 4.12 Confidentiality

CONSULTANT agrees to maintain confidentiality of all work and work products produced under this Agreement, except to the extent otherwise required by law or permitted in writing by CITY. CITY agrees to maintain confidentiality of any documents owned by CONSULTANT and clearly marked by CONSULTANT as "Confidential" or "Proprietary", except to the extent otherwise required by law or permitted in writing by CONSULTANT. CONSULTANT acknowledges that CITY is subject to the California Public Records Act.

Section 4.13 Applicable Law, Jurisdiction, Severability, and Attorney's Fees

This Agreement shall be governed by the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be venued with the San Joaquin County Superior Court. If any part of this Agreement is found to conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in force and effect. In the event any dispute between the parties arises under or regarding this Agreement, the prevailing party in any litigation of the dispute shall be entitled to reasonable attorney's fees from the party who does not prevail as determined by the San Joaquin County Superior Court.

Section 4.14 City Business License Requirement

CONSULTANT acknowledges that Lodi Municipal Code Section 3.01.020 requires CONSULTANT to have a city business license and CONSULTANT agrees to secure such license and pay the appropriate fees prior to performing any work hereunder.

Section 4.15 Captions

The captions of the sections and subsections of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question or interpretation or intent hereunder.

Section 4.16 Integration and Modification

This Agreement represents the entire understanding of CITY and CONSULTANT as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing, signed by both parties.

Section 4.17 Contract Terms Prevail

All exhibits and this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and the attached exhibits, the terms of this Agreement shall prevail.

Section 4.18 Severability

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

Section 4.19 Ownership of Documents

All documents, photographs, reports, analyses, audits, computer media, or other material documents or data, and working papers, whether or not in final form, which have been obtained or prepared under this Agreement, shall be deemed the property of CITY. Upon CITY's request, CONSULTANT shall allow CITY to inspect all such documents during CONSULTANT's regular business hours. Upon termination or completion of services under this Agreement, all information collected, work product and documents shall be delivered by CONSULTANT to CITY within ten (10) calendar days.

CITY agrees to indemnify, defend and hold CONSULTANT harmless from any liability resulting from CITY's use of such documents for any purpose other than the purpose for which they were intended.

Section 4.20 Authority

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Agreement.


Section 4.21 Federal Transit Funding Conditions

☐ If the box at left is checked, the Federal Transit Funding conditions attached as Exhibit apply to this contract. In the event of a conflict between the terms of this contract or any of its other exhibits, and the Federal Transit Funding Conditions, the Federal Transit Funding Conditions will control.

IN WITNESS WHEREOF, CITY and CONSULTANT have executed this Agreement as of the date first above written.

CITY OF LODI, a municipal corporation

ATTEST:



RANDI JOHL
City Clerk



KONRADT BARTLAM, City Manager

APPROVED AS TO FORM:
D. STEPHEN SCHWABAUER, City Attorney
JANICE D. MAGDICH, Deputy City Attorney

CONSULTANT: Siegfried Engineering

By: 

By: 

Name: Anthony J. Lopes
Title: President

Attachments:
Exhibit A – Scope of Services
Exhibit B – Fee Proposal
Exhibit C – Insurance Requirements

Funding Source: 1212811
(Business Unit & Account No.)

Doc ID: PSA_SiegfriedEngineering

CA:rev.01.2012

EXHIBIT A

SCOPE OF STRUCTURAL ENGINEERING SERVICES

**LODI GRAPE BOWL – PHASE 3
LODI, CALIFORNIA**

February 23, 2012

SIEGFRIED ENGINEERING, INC. (SEI) shall provide civil and structural engineering services to Client for the proposed Lodi Grape Bowl accessibility and plaza improvements. The proposed scope of services shall include the following:

TASK 1 CONSTRUCTION DOCUMENTS

1. Prepare Structural plans and calculations for proposed plaza and accessibility ramp improvements as depicted on preliminary City plans including;
 - a. concrete flatwork, ramps and curbs,
 - b. retaining walls (concrete, keystone or masonry),
 - c. railing,
 - d. proposed scoreboard support columns and foundations, including anchorage details to the pre-manufactured sign structure.
2. Prepare Civil onsite improvement plans including;
 - a. site dimension plan,
 - b. grading plan,
 - c. utility plan including related storm drain and domestic water services and modification of existing sewer main to serve the proposed restroom/snack bar building.
 - d. detailing of accessibility features.
 - e. erosion control plan.
3. Prepare Engineer's Opinion of Probable Costs for concrete improvements.
4. Prepare Specifications
5. Provide Structural plan sets for building permit submittals.
6. Respond to City plan review comments.
7. Attend one project team meeting at City offices.

TASK 2 CONSTRUCTION SUPPORT SERVICES

1. Assist contractor with plan interpretation during bidding and construction, responding to Requests For Information and preparing minor plan addendums as required to clarify plan intent.
2. Review contractor product and shop drawing submittals.
3. Two site visits during construction.

EXCEPTIONS TO THE SCOPE OF SERVICES

It is understood that the following **are not included** in the scope of services:

1. Geotechnical and Environmental engineering,
2. Land surveying
3. Analysis and redesign for value engineering proposals once plans have been substantially completed.

EXHIBIT B

FEE SCHEDULE

**LODI GRAPE BOWL – PHASE 3
LODI, CALIFORNIA**

February 23, 2012

| Task Description | Fees |
|---|--------------------|
| Task 1 Construction Documents | \$18,400.00 |
| Task 2 Construction Support Services | \$3,000.00 |
| Reimbursable Expenses | \$300.00 |
| TOTAL FEE hourly rate basis plus reimbursable expenses not to exceed | \$21,700.00 |

Notes:

1. Additional services are subject to additional charge mutually agreed to prior to start of the additional work. Changes in the scope of services or magnitude of the Project are additional services. Should the Project be postponed or canceled, our office will bill for the time expended on the Project up to the time of notification including close-out cost.
2. We will bill you monthly based on time expended plus reimbursable expenses. Reimbursable expenses shall be billed in accordance with our rate schedule in effect at the time services are rendered.



EXHIBIT C

Insurance Requirements for Contractor The Contractor shall take out and maintain during the life of this contract, insurance coverage as listed below. These insurance policies shall protect the Contractor and any subcontractor performing work covered by this contract from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from Contractor's operations under this contract, whether such operations be by Contractor or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amount of such insurance shall be as follows:

- | | |
|--|--|
| 1. <u>COMPREHENSIVE GENERAL LIABILITY</u> \$1,000,000 Ea. Occurrence \$1,000,000 Aggregate | 2. <u>COMPREHENSIVE AUTOMOBILE LIABILITY</u> \$1,000,000 Bodily Injury - Ea. Person \$1,000,000 Bodily Injury - Ea. Occurrence \$1,000,000 Property Damage - Ea. Occurrence |
|--|--|

NOTE: Contractor agrees and stipulates that any insurance coverage provided to the City of Lodi shall provide for a claims period following termination of coverage which is at least consistent with the claims period or statutes of limitations found in the California Tort Claims Act (California Government Code Section 810 et seq.).

NOTE: (1) The street address of the CITY OF LODI must be shown along with (a) and (b) above: 221 West Pine Street, Lodi, California, 95241-1910; (2) The insurance certificate must state, on its face or as an endorsement, a description of the project that it is insuring.

A copy of the certificate of insurance with the following endorsements shall be furnished to the City:

- (a) Additional Named Insured Endorsement
Such insurance as is afforded by this policy shall also apply to the City of Lodi, its elected and appointed Boards, Commissions, Officers, Agents, Employees, and Volunteers as additional named insureds.

(This endorsement shall be on a form furnished to the City and shall be included with Contractor's policies.)
- (b) Primary Insurance Endorsement
Such insurance as is afforded by the endorsement for the Additional Insureds shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the insurance afforded by this endorsement.
- (c) Severability of Interest Clause
The term "insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limit of the company's liability.
- (d) Notice of Cancellation or Change in Coverage Endorsement
This policy may not be canceled nor the coverage reduced by the company without 30 days' prior written notice of such cancellation or reduction in coverage to the Risk Manager, City of Lodi, 221 W. Pine St., Lodi, CA 95240.

Compensation Insurance The Contractor shall take out and maintain during the life of this contract, Worker's Compensation Insurance for all of Contractor's employees employed at the site of the project and, if any work is sublet, Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in hazardous work under this contract at the site of the project is not protected under the Worker's Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide insurance for the protection of said employees. This policy may not be canceled nor the coverage reduced by the company without 30 days' prior written notice of such cancellation or reduction in coverage to the Risk Manager, City of Lodi, 221 W. Pine St., Lodi, CA 95240. A Waiver of Subrogation against the City of Lodi is required.

NOTE: No contract agreement will be signed nor will any work begin on a project until the proper insurance certificate is received by the City.

EXHIBIT 2

SCOPE OF ENGINEERING SERVICES

LODI GRAPE BOWL

BUILDING ADDITIONAL SCOPE OF SERVICES

LODI, CALIFORNIA

April 5, 2012

SIEGFRIED ENGINEERING, INC. (SEI) shall provide additional engineering services to Client for the proposed Lodi Grape Bowl accessibility and plaza improvements to include program documents for the proposed Concession/Restroom/Ticket Building. These services and fees are above and beyond previously approved contracts. The proposed scope of services shall include the following:

TASK 1 BUILDING PROGRAM DOCUMENTS

Prepare program documents including plans, specifications and an engineer's estimate of probable construction costs for the proposed building as depicted on preliminary plans provided by Client. This includes the preparation of design documents to an approximate 30% completion level to enable the project to be bid as a Design-Build project. We understand the contractor will prepare all final designs and documents for building permit submittals. Siegfried services shall include;

1. Architectural site plans depicting building layout and arrangement.
2. Architectural plans including floor plan, building elevations and door, window and finish schedules.
3. Structural plans including a roof framing plan, foundation plan, and general details depicting framing, wall and lateral load resisting systems.
4. Electrical plans detailing site and building power supply systems and lighting requirements.
5. HVAC plans detailing recommended ventilation systems. We understand there will be no heating or cooling systems.
6. Plumbing plans identifying basic plumbing arrangements and fixture specifications.
7. Engineer's Opinion of Probable Costs for proposed improvements.
8. Book Specifications
9. Respond to City plan review comments.
10. Attend two project team meetings at City offices.

TASK 2 BUILDING CONSTRUCTION SUPPORT SERVICES

1. Assist contractor with plan interpretation during bidding and construction, responding to Requests For Information and preparing minor plan addendums as required to clarify plan intent.
2. Review contractor plans, product and shop drawing submittals.
3. Two additional site visits during construction.

Exhibit 2 (Cont'd.)

EXCEPTIONS TO THE SCOPE OF SERVICES

It is understood that the following **are not included** in the scope of services:

1. Geotechnical and Environmental engineering,
2. Landscape Architecture,
3. Construction oversight and inspections,
4. Exceptions listed in the approved contract except as herein modified,
5. Land surveying. We understand the Client will provide a topographic plan of the site. This plan is the basis for design and estimating. Siegfried will not be held responsible for any errors or omissions caused by inaccurate topographic information provided.
6. Analysis and redesign for value engineering proposals once plans have been substantially completed.

FEE SCHEDULE
LODI GRAPE BOWL
BUILDING ADDITIONAL SCOPE OF SERVICES
LODI, CALIFORNIA

April 5, 2012

| Task Description | Fees |
|---|--------------------|
| Task 1 Building Program Documents | \$14,500.00 |
| Task 2 Building Construction Support Services | \$3,000.00 |
| Reimbursable Expenses | \$300.00 |
| TOTAL FEE hourly rate basis plus reimbursable expenses not to exceed | \$17,800.00 |

Notes:

1. Additional services are subject to additional charge mutually agreed to prior to start of the additional work. Changes in the scope of services or magnitude of the Project are additional services. Should the Project be postponed or canceled, our office will bill for the time expended on the Project up to the time of notification including close-out cost.
2. We will bill you monthly based on time expended plus reimbursable expenses. Reimbursable expenses shall be billed in accordance with our rate schedule in effect at the time services are rendered.

1. AA# _____
2. JV# _____

CITY OF LODI
APPROPRIATION ADJUSTMENT REQUEST

TO: Internal Services Dept. - Budget Division
3. FROM: Rebecca Areida-Yadav 5. DATE: 04/05/2012
4. DEPARTMENT/DIVISION: Public Works

6. REQUEST ADJUSTMENT OF APPROPRIATION AS LISTED BELOW

| | FUND # | BUS. UNIT # | ACCOUNT # | ACCOUNT TITLE | AMOUNT |
|--------------------------------------|--------|-------------|-----------|---------------|--------------|
| A. SOURCE OF FINANCING | 1212 | | 3205 | Fund Balance | \$ 20,000.00 |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| B. USE OF FINANCING | 1212 | 1212811 | 1825.2400 | Grape Bowl | \$ 20,000.00 |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

7. REQUEST IS MADE TO FUND THE FOLLOWING PROJECT NOT INCLUDED IN THE CURRENT BUDGET

Please provide a description of the project, the total cost of the project, as well as justification for the requested adjustment. If you need more space, use an additional sheet and attach to this form.

Amendment to professional services agreement for design services for the Grape Bowl with Siegfried Engineering.

If Council has authorized the appropriation adjustment, complete the following:

Meeting Date: _____ Res No: _____ Attach copy of resolution to this form.

Department Head Signature: _____

8. APPROVAL SIGNATURES

Deputy City Manager/Internal Services Manager

Date

Submit completed form to the Budget Division with any required documentation.
Final approval will be provided in electronic copy format.

RESOLUTION NO. 2012-_____

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING CITY MANAGER TO EXECUTE
AMENDMENT TO PROFESSIONAL SERVICES
AGREEMENT FOR DESIGN SERVICES FOR GRAPE BOWL
STADIUM AND FURTHER APPROPRIATING FUNDS

=====

WHEREAS, on March 21, 2012, City Council approved a professional services agreement with Siegfried Engineering in the amount of \$21,700 to design the Phase 3 Grape Bowl Improvement Project, including construction of ADA-accessible ramp to the south-side upper concourse only, ADA seating at the south-side upper concourse, restrooms, concession, ticket booth, scoreboard, landscape, irrigation and related appurtenant facilities; and

WHEREAS, the Siegfried Engineering scope of work that was approved included design documents and construction cost estimates for the scoreboard, plaza, utilities, ADA-accessible ramps to the south-side upper concourse and ADA seating at the upper concourse but did not include the design of the restrooms, concession, and ticket booth building; and

WHEREAS, staff recommends construction of the restrooms, concessions, and ticket booth building using a design build method and adding the task of preparing the construction documents to the Siegfried Engineering scope of work.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute Amendment No. 1 to the current Professional Services Agreement for Design Services for Grape Bowl Stadium with Siegfried Engineering, Inc., of Stockton, California, in an amount not to exceed \$17,800, for a total not to exceed amount of \$39,500; and

BE IT FURTHER RESOLVED that funds in the amount of \$20,000 be appropriated from Parks and Recreation Capital Outlay funds.

Dated: April 18, 2012

=====

I hereby certify that Resolution No. 2012-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held April 18, 2012, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk



CITY OF LODI

COUNCIL COMMUNICATION

TM

AGENDA TITLE: Adopt Resolution Authorizing City Manager to Execute Amendment to Professional Services Agreement for Development Impact Mitigation Fee Program Update with Harris and Associates, of Tracy (\$30,000) and Appropriating Funds (\$50,000)

MEETING DATE: April 18, 2012

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt resolution authorizing City Manager to execute amendment to professional services agreement for Development Impact Mitigation Fee Program Update with Harris and Associates, of Tracy, in the amount of \$30,000 and appropriating funds in the amount of \$50,000.

BACKGROUND INFORMATION: On March 16, 2011, City Council approved a professional services agreement with Harris and Associates in the amount of \$451,190 to update the development impact mitigation fee program pursuant to adoption of the 2010 General Plan. At that time, completion of the project was planned for December 7, 2011.

Over the past 24 months, the project team has diligently worked with the building and development community to build consensus on the structure and scope of the fee program. This has resulted in significant additional and unanticipated work and delay to develop the final fees for water, wastewater, storm drainage, parks, transportation, and electric. In addition, preparation of a new Bike Master Plan has been added to the program. The additional scope of work is presented in the contract amendment provided as Attachment 1 and is summarized below.

1. Additional meetings and project management services
2. Additional cost estimating associated with changing project descriptions and program scope
3. Additional analysis resulting from changes to the program scope in the areas of water, wastewater, storm drainage, parks, transportation and electric
4. Updating the master plans to be consistent with the changes to the scope of the fee program and adding the Bike Master Plan

It is recommended Council adopt a resolution authorizing the City Manager to execute an amendment to the professional services agreement for the Development Impact Mitigation Fee Program with Harris and Associates in the amount of \$30,000 and appropriating funds in the amount of \$50,000.

FISCAL IMPACT: Not applicable.

FUNDING AVAILABLE: Funds are already appropriated in 182034, 270034, 326034, 332034, 1217034, and 165034. Appropriate funds in the amount of \$50,000 (Fund 325).

Jordan Ayers
Deputy City Manager/Internal Services Director

F. Wally Sandelin
Public Works Director

FWS/pmf
Attachment

APPROVED: _____
Konradt Bartlam, City Manager

AMENDMENT NO. 1

Harris & Associates
Professional Services Agreement

THIS AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT, is made and entered this ____ day of April, 2012, by and between the CITY OF LODI, a municipal corporation (hereinafter "CITY"), and HARRIS & ASSOCIATES (hereinafter "CONSULTANT").

WITNESSETH:

1. WHEREAS, CONSULTANT and CITY entered into a Professional Services Agreement (Agreement) on March 29, 2011, as set forth in Exhibit 1 (attached).
2. WHEREAS, CITY requested to amend said Agreement as set forth in Exhibit 2 (attached); and
3. WHEREAS, CONSULTANT agrees to said amendment;

NOW, THEREFORE, the parties agree to amend the Scope of Services and Fee as set forth in the Agreement as Exhibit 1 and 2, respectively.

IN WITNESS WHEREOF, CITY and CONSULTANT have executed this Amendment No. 1 on _____, 2012.

CITY OF LODI, a municipal corporation
Hereinabove called "CITY"

HARRIS & ASSOCIATES
Hereinabove called "CONSULTANT"

KONRADT BARTLAM
City Manager

Name:
Title:

Attest:

RANDI JOHL, City Clerk

Approved as to Form:

D. STEPHEN SCHWABAUER
City Attorney



AGREEMENT FOR CONSULTING SERVICES**ARTICLE 1
PARTIES AND PURPOSE****Section 1.1 Parties**

THIS AGREEMENT is entered into on ~~March 16, 2011~~ ^{March 29, 2011}, by and between the CITY OF LODI, a municipal corporation (hereinafter "CITY"), and HARRIS & ASSOCIATES (hereinafter "CONSULTANT").

Section 1.2 Purpose

CITY selected the CONSULTANT to provide the consulting services to prepare an update of the Impact Mitigation Fee Program in accordance with attached scope of services, Exhibit A.

CITY wishes to enter into an agreement with CONSULTANT for Development Impact Fee Study project (hereinafter "Project") as set forth in the Scope of Services attached here as Exhibit A.

**ARTICLE 2
SCOPE OF SERVICES****Section 2.1 Scope of Services**

CONSULTANT, for the benefit and at the direction of CITY, shall perform the scope of services as set forth in Exhibit A, attached and incorporated by this reference.

Section 2.2 Time For Commencement and Completion of Work

CONSULTANT shall commence work within ten (10) days of executing this Agreement, and complete work under this Agreement based on a mutually agreed upon timeline.

CONSULTANT shall submit to CITY the various project deliverables as indicated in the attached project scope of services.

CONSULTANT shall not be responsible for delays caused by the failure of CITY staff or agents to provide required data or review documents within the appropriate time frames. The review time by CITY and any other agencies involved in the project shall not be counted against CONSULTANT's contract performance period. Also, any delays due to weather, vandalism, acts of God, etc., shall not be counted. CONSULTANT shall remain in contact with reviewing agencies and make all efforts to review and return all comments.

Section 2.3 Meetings

CONSULTANT shall attend meetings as indicated in the Scope of Services, Exhibit A.

Section 2.4 Staffing

CONSULTANT acknowledges that CITY has relied on CONSULTANT's capabilities and on the qualifications of CONSULTANT's principals and staff as identified in its proposal to CITY. The scope of services shall be performed by CONSULTANT, unless agreed to otherwise by CITY in writing. CITY shall be notified by CONSULTANT of any change of Project Manager and CITY is granted the right of approval of all original, additional and replacement personnel in CITY's sole discretion and shall be notified by CONSULTANT of any changes of CONSULTANT's project staff prior to any change.

CONSULTANT represents that it is prepared to and can perform all services within the scope of services specified in Exhibit A. CONSULTANT represents that it has, or will have at the time this Agreement is executed, all licenses, permits, qualifications, insurance and approvals of whatsoever nature are legally required for CONSULTANT to practice its profession, and that CONSULTANT shall, at its own cost and expense, keep in effect during the life of this Agreement all such licenses, permits, qualifications, insurance and approvals.

Section 2.5 Subcontracts

CITY acknowledges that CONSULTANT may subcontract certain portions of the scope of services to subconsultants as specified and identified in Exhibit A. Should any subconsultants be replaced or added after CITY's approval, CITY shall be notified within ten (10) days and said subconsultants shall be subject to CITY's approval prior to initiating any work on the Project. CONSULTANT shall remain fully responsible for the complete and full performance of said services and shall pay all such subconsultants.

ARTICLE 3 COMPENSATION

Section 3.1 Compensation

CONSULTANT's compensation for all work under this Agreement shall not exceed the amount of Fee Proposal, attached as a portion of Exhibit B.

CONSULTANT shall not undertake any work beyond the scope of this Agreement unless such additional work is approved in advance and in writing by CITY.

Section 3.2 Method of Payment

CONSULTANT shall submit invoices for completed work on a monthly basis, providing, without limitation, details as to amount of hours, individual performing said work, hourly rate, and indicating to what aspect of the scope of services said work is attributable.

Section 3.3 Costs

The fees shown on Exhibit B include all reimbursable costs required for the performance of the individual work tasks by CONSULTANT and/or subconsultant and references to reimbursable costs located on any fee schedules shall not apply. Payment of additional reimbursable costs considered to be over and above those inherent in the original Scope of Services shall be approved in advance, in writing, by CITY.

CONSULTANT charge rates are attached and incorporated with Exhibit B. The charge rates for CONSULTANT shall remain in effect and unchanged for the duration of the Project unless approved by CITY.

Section 3.4 Auditing

CITY reserves the right to periodically audit all charges made by CONSULTANT to CITY for services under this Agreement. Upon request, CONSULTANT agrees to furnish CITY, or a designated representative, with necessary information and assistance.

CONSULTANT agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of this Agreement. CONSULTANT agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. CONSULTANT further agrees to maintain such records for a period of three (3) years after final payment under this Agreement.

ARTICLE 4 MISCELLANEOUS PROVISIONS

Section 4.1 Nondiscrimination

In performing services under this Agreement, CONSULTANT shall not discriminate in the employment of its employees or in the engagement of any

subconsultants on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, age, or any other criteria prohibited by law.

Section 4.2 Responsibility for Damage

CONSULTANT shall indemnify and save harmless the City of Lodi, the City Council, elected and appointed Boards, Commissions, all officers and employees or agent from any suits, claims or actions brought by any person or persons for or on account of any injuries or damages sustained or arising from the services performed in this Agreement but only to the extent caused by the negligent acts, errors or omissions of the consultant and except those injuries or damages arising out of the active negligence of the City of Lodi or its agents, officers or agents.

Section 4.3 No Personal Liability

Neither the City Council, the City Engineer, nor any other officer or authorized assistant or agent or employee shall be personally responsible for any liability arising under this Agreement.

Section 4.4 Responsibility of CITY

CITY shall not be held responsible for the care or protection of any material or parts of the work prior to final acceptance, except as expressly provided herein.

Section 4.5 Insurance Requirements for CONSULTANT

CONSULTANT shall take out and maintain during the life of this Agreement, insurance coverage as listed below. These insurance policies shall protect CONSULTANT and any of its subcontractor performing work covered by this Agreement from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from CONSULTANT'S operations under this Agreement, whether such operations be by CONSULTANT or by any of its subcontractor or by anyone directly or indirectly employed by either of them, and the amount of such insurance shall be as follows:

1. **COMPREHENSIVE GENERAL LIABILITY**

\$1,000,000 Bodily Injury -

Ea. Occurrence/Aggregate

\$1,000,000 Property Damage -

Ea. Occurrence/Aggregate

or

\$1,000,000 Combined Single Limits

2. COMPREHENSIVE AUTOMOBILE LIABILITY

\$1,000,000 Bodily Injury - Ea. Person

\$1,000,000 Bodily Injury - Ea. Occurrence

\$1,000,000 Property Damage - Ea. Occurrence

or

\$1,000,000 Combined Single Limits

NOTE: CONSULTANT agrees and stipulates that any insurance coverage provided to CITY shall provide for a claims period following termination of coverage.

A copy of the certificate of insurance with the following endorsements shall be furnished to CITY:

(a) General Liability Additional Named Insured Endorsement

Such insurance as is afforded by this policy shall also apply to the City of Lodi, its elected and appointed Boards, Commissions, Officers, Agents, Employees and Volunteers as additional named insureds insofar as work performed by the insured under written Agreement with CITY. (This endorsement shall be on a form furnished to CITY and shall be included with CONSULTANT'S policies.)

(b) General Liability Primary Insurance Endorsement

Such insurance as is afforded by the endorsement for the Additional Insureds shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the insurance afforded by this endorsement.

(c) General Liability Severability of Interest Clause

The term "insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limit of the CONSULTANT's liability.

(d) Notice of Cancellation or Change in Coverage Endorsement

This policy may not be canceled by the CONSULTANT without 30 days' prior written notice of such cancellation to the City Attorney, City of Lodi, P.O. Box 3006, Lodi, CA, 95241.

(e) CONSULTANT agrees and stipulates that any insurance coverage provided to CITY shall provide for a claims period following termination of coverage which is at

least consistent with the claims period or statutes of limitations found in the California Tort Claims Act (California Government Code Section 810 et seq.). "Claims made" coverage requiring the insureds to give notice of any potential liability during a time period shorter than that found in the Tort Claims Act shall be unacceptable.

Section 4.6 Worker's Compensation Insurance

CONSULTANT shall take out and maintain during the life of this Agreement, Worker's Compensation Insurance for all of CONSULTANT'S employees employed at the site of the project and, if any work is sublet, CONSULTANT shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the CONSULTANT. In case any class of employees engaged in hazardous work under this Agreement at the site of the project is not protected under the Worker's Compensation Statute, CONSULTANT shall provide and shall cause each subcontractor to provide insurance for the protection of said employees. This policy may not be canceled nor the coverage reduced by the CONSULTANT without 30 days' prior written notice of such cancellation or reduction in coverage to the City Attorney, City of Lodi, P.O. Box 3006, Lodi, CA, 95241.

Section 4.7 City Business License Requirement

Consultant/Contractor acknowledges that Lodi Municipal Code Section 3.01.020 requires Consultant/Contractor to have a city business license and Consultant/Contractor agrees to secure such license and pay the appropriate fees prior to performing any work hereunder.

Section 4.8 Attorney's Fees

In the event any dispute between the parties arises under or regarding this Agreement, the prevailing party in any litigation of the dispute shall be entitled to reasonable attorney's fees from the party who does not prevail as determined by the court.

Section 4.9 Successors and Assigns

CITY and CONSULTANT each bind themselves, their partners, successors, assigns, and legal representatives to this Agreement without the written consent of the others. CONSULTANT shall not assign or transfer any interest in this Agreement without the prior written consent of CITY. Consent to any such transfer shall be at the sole discretion of CITY.

Section 4.10 Notices

Any notice required to be given by the terms of this Agreement shall be deemed to have been given when the same is personally served or sent by certified mail or express or overnight delivery, postage prepaid, addressed to the respective parties as follows:

To CITY: City of Lodi
F. Wally Sandelin, Public Works Director
221 West Pine Street
P.O. Box 3006
Lodi, CA 95241-1910

To CONSULTANT: Harris & Associates
Alison Bouley, P.E.
2316 Orchard Parkway, Suite 120
Tracy, CA 95377

Section 4.11 Cooperation of CITY

CITY shall cooperate fully in a timely manner in providing relevant information that it has at its disposal.

Section 4.12 CONSULTANT is Not an Employee of CITY

It is understood that CONSULTANT is not acting hereunder in any manner as an employee of CITY, but solely under this Agreement as an independent contractor.

Section 4.13 Termination

CITY may terminate this Agreement by giving CONSULTANT at least ten (10) days written notice. Where phases are anticipated within the Scope of Services, at which an intermediate decision is required concerning whether to proceed further, CITY may terminate at the conclusion of any such phase. Upon termination, CONSULTANT shall be entitled to payment as set forth in the attached Exhibit A to the extent that the work has been performed. Upon termination, CONSULTANT shall immediately suspend all work on the Project and deliver any documents or work in progress to CITY. However, CITY shall assume no liability for costs, expenses or lost profits resulting from services not completed or for contracts entered into by CONSULTANT with third parties in reliance upon this Agreement.

This Agreement may be terminated by CONSULTANT should CITY fail to perform in accordance with its terms through no fault of CONSULTANT. CITY shall pay CONSULTANT for all services performed and expenses incurred in accordance with this Agreement, up to and including the effective date of termination.

Section 4.14 Severability

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

Section 4.15 Captions

The captions of the sections and subsections of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question or interpretation or intent.

Section 4.16 Integration and Modification

This Agreement represents the entire integrated Agreement between CONSULTANT and CITY; supersedes all prior negotiations, representations, or Agreements, whether written or oral, between the parties; and may be amended only be written instrument signed by CONSULTANT and CITY.

Section 4.17 Applicable Law and Venue

This Agreement shall be governed by the laws of the State of California. Venue for any court proceeding brought under this Agreement will be with the San Joaquin County Superior Court.

Section 4.18 Contract Terms Prevail

All exhibits and this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and the attached exhibits, the terms of this Agreement shall prevail.

Section 4.19 Authority

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Agreement.

Section 4.20 Ownership of Documents

All documents, photographs, reports, analyses, audits, computer tapes or cards, or other material documents or data, and working papers, whether or not in final form, which have been obtained or prepared for this project, shall be deemed the property of CITY. Upon CITY's request, CONSULTANT shall allow CITY to inspect all such documents during regular business hours. Upon termination or completion, all information collected, work product and documents shall be delivered by CONSULTANT to CITY within ten (10) days.

CITY agrees to indemnify, defend and hold CONSULTANT harmless from any liability resulting from CITY's use or modification of such documents for any purpose other than the purpose for which they were prepared.


Section 4.21 No Third-Party Beneficiaries


Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third-party against either CITY or CONSULTANT.

IN WITNESS WHEREOF, CITY and CONSULTANT have executed this Agreement as of the date first above written.

CITY OF LODI, a municipal corporation


ATTEST:

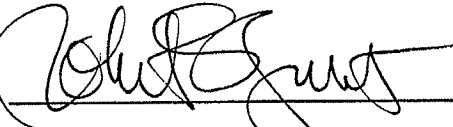
By 
RANDI JOHL
CITY CLERK

By 
KONRADT BARTLAM
CITY MANAGER

APPROVED AS TO FORM:

HARRIS & ASSOCIATES

Dated: March 29, 2011
By 
D. STEPHEN SCHWABAUER
CITY ATTORNEY

By 
Title: Vice President

Attachments:

- Exhibit A – Scope of Services
- Exhibit B – Fee Proposal
- Exhibit C – Insurance Requirements

EXHIBIT A SCOPE OF WORK

Task 1 - Project Management

Task 1.1 – Project Start-up

An initial kick-off meeting will be held with the entire Harris team and the City. The purpose of this meeting will be to discuss the scope of services, obtain technical studies associated with facilities for which fees are being calculated, discuss facility standards and existing surpluses or deficiencies in facilities, and generally coordinate the work effort. We will also discuss the goals and schedule of the project and review any significant issues the City has already identified related to this project. Goodwin Consulting Group (GCG) will also review the Policies and Operating Assumptions Report with City staff to discuss various nexus methodologies, assumptions, approaches, and considerations to make the fee study more defensible pursuant to current case law related to development fees.

As a result of this meeting, Harris will prepare a project memorandum that includes the project description, summary of scope of services, project schedule, project contacts, communication protocols, and a list of information that our team needs to begin work on the project. This memorandum will be submitted within one week of the kick-off meeting.

Task 1.2 – Project Work Plan

Harris and GCG will prepare a project work plan that details the process envisioned in preparation of the IMFP. The work plan is a key element in understanding the flow of the project and where critical decisions are needed in order to keep the project on schedule. The work plan will include flow diagrams illustrating where decisions or input from the City is required. In addition, the work plan will discuss the current financing strategy. The work plan will also discuss the quality assurance program that will be in place to assure that the work prepared is of the highest quality. This work plan will be submitted within one week following the notice to proceed. Along with the work plan, a more detailed schedule than the one included in this proposal will be prepared using Microsoft Project and will be submitted to the City. The schedule will clearly define the anticipated submittal dates, anticipated meeting dates, and allocated City review time. The schedule will be modified as needed following the kick-off meeting.

Task 1.3 – Preparation of Monthly Progress Reports

Each month, Harris will submit a detailed progress report that highlights the status of the project. Each of these reports will include a brief description of the work completed during the billed time period. The report will detail the project budget, current expenditures and cumulative expenditures for each task. The schedule will be reviewed and any deviations will be noted in the report. In addition, a summary of any outstanding issues needing resolved or any key decisions that were made will be highlighted in the report. The format of this report will be submitted with-in one week of the kick-off meeting for approval by the City.

Task 1.4 – Project Status Meetings

The project manager will coordinate monthly status meetings with the City. It is anticipated that not all project members will be needed at all meetings and will be coordinated as necessary based on each meeting agenda. Harris will prepare an agenda for each of the meetings and will prepare and submit meeting minutes following each meeting. The minutes will include an action item column for easy tracking of follow-up items. An effort will be made to coordinate and combine monthly meeting dates with presentations to City staff and the development community/BIA. A total of twelve meetings are assumed under this task and includes all meetings with City staff and developers/BIA.

Task 1.5 – Presentations to City Council and Public Officials

Presentations to City Council and other commissions and committees are a critical part of the IMFP process. It is anticipated that four presentations will be given to the City Council, one presentation will be made to the planning commission, one presentation will be made to the recreation commission, and one presentation to the budget committee. For each of these presentations, the team will prepare exhibits and/or PowerPoint slides as needed to clearly convey the process and findings of the IMFP. Prior to the meeting, the content of the presentation and the materials to be presented will be discussed with the City team. This task includes a total of seven public meetings.

Task 2 – Policies and Operating Assumptions Report

Task 2.1 – Prepare a Policies and Operating Assumptions Report

The City's Policies and Operating Assumptions Report contains the City's policies, guidelines, methodologies, and assumptions for its IMFP. The Harris team will review the report and provide recommendations, where needed, regarding demographic assumptions, land uses categories, development forecasts, and phasing methodologies, as well as all aspects of impact fees and financing methodologies, such as cost allocation methodologies, debt financing, alternate sources of funding, annual inflation factors, interfund borrowing, credit/reimbursement policies, method of 5, 10, 15, 20 year development scenarios, infrastructure that developers are going to be expected to build, and Infill Policies. The Harris Team will update the report to reflect the policies moving forward. It is anticipated that this report will be updated to reflect policies and decisions that are needed in completing any of the infrastructure studies, but will remain a work in process during the finance plan development. The Harris team will provide a draft update of the City's Policies and Operating Assumptions Report, and then a final report will be provided after incorporating comments from City staff.

Task 3 – Development of Land-Use Forecast

Task 3.1 – Assess Potential Fee Zone Geography

Harris will review the proposed development areas within the City of Lodi and the infrastructure needed to serve those areas and will analyze the need to have different fee zones. The City's

goal is to avoid fee zones whenever possible. However, in some cases the required infrastructure may lend itself to fee zones in order to create a more defensible nexus. Harris will also compile a digital base map using the files provided by the City and will use assessor parcel maps and other development maps to compile a list of APNs, owners, acreage and land use information that will form the database. In addition, Infill Parcels will be identified. This information will be used to create the database within MapGuide and will also be used to create an Excel file that will be used for the growth forecasts.

Task 3.2 – Inventory Approved and Proposed Development Projects

Harris will work with City staff to obtain copies of or information regarding all planned development projects. This includes remaining units in partially completed development projects, any subdivision maps that have been submitted to the City, and any potential projects where inquiries have been made. The goal of this task is to better define the information obtained through the BIA and local development community meetings. These projects will be added to the map and the database prepared in Task 3.1.

Task 3.3 – Prepare Citywide Development Forecasts

GCG will review historical growth data for the City, as well as development and demographic information from the City's updated General Plan, SJCOG, the development community, Department of Finance, and other sources to forecast future development in the City. Harris will develop a digital base map of all remaining developable land and GCG will incorporate this information to estimate the total number of potential residential units and nonresidential building space remaining in the General Plan area.

Task 3.4 – Prepare Growth Forecast

Through close coordination with City staff, GCG will develop a growth forecast model for residential and nonresidential development. The results of this forecast will be summarized in a draft technical memorandum that will include a discussion of all assumptions and methodologies used in the development forecast. After receiving comments from all parties, GCG will provide a final technical memorandum.

Task 4 – Master Plan Documents/Capital Improvement Plans

Task 4.1 – Coordinate Master Plan Documents/Capital Improvement Plans

Based on conversations with City staff, it is anticipated that the only technical consultants needed as part of this project are for traffic and parks. Harris will oversee the work of Fehr & Peers and Vallier Design Associates as they complete the required master plans for Streets/Transportation and Parks and Recreation as further described below.

The City has completed various components of the Water, Sewer, Storm Drainage, and Electrical Utilities master plans. Harris will obtain and review the information from the City and will work with City's staff on any additional technical analysis that needs to be complete for the purpose of this project. Harris will develop the report that will compile the City's technical

analysis into a master plan document. Harris will not provide any of the modeling or technical analysis and the reports will be prepared with City of Lodi's name on them. A more detailed description of each component is given below:

- **Water** – Per the draft Policies and Operating Assumptions report, the Reed Group will complete, under separate contract, all water related master planning, phasing and capital improvement project cost estimates for the water utility. Harris will review the documents provided and will coordinate with the Reed Group to verify that all the master planning work is done in accordance with the development assumptions determined under Task 3.4 . Harris will provide a peer review of the cost estimates and master plan facilities and will incorporate the cost estimates into the CIP templates. Harris will coordinate with the Reed group to obtain information on phasing to match the 5, 10, 15 and 20 year growth assumptions as well. Harris will compile the information received from the Reed Group into a Water Master Plan report.
- **Wastewater** – Per the draft Policies and Operating Assumptions report, the Reed Group will, under separate contract, provide the wastewater impact fee for the treatment and disposal component. Harris will review the documents provided and will coordinate with the Reed Group to verify that all the wastewater treatment plant fee is developed in accordance with the development assumptions determined under Task 3.4 . Harris will coordinate with the Reed group to obtain information on phasing to match the 5, 10, 15 and 20 year growth assumptions as well. Harris will also coordinate with the City to gather the information related to the wastewater transmission component including phasing information for the 5, 10, 15 and 20 year growth assumptions. Harris will review with the City any alternatives that may have been identified to determine what the most cost effective or most desired alternative might be and will discuss the use of possible zones. Harris will compile the information received from the Reed Group and from the City into a Wastewater Master Plan report. In addition, Harris will review and update Policy No. 6 for Wastewater fees.
- **Storm Drainage** – Harris will review the various studies and master plans that exist for Storm Drainage within the City. Harris will also work with the development community and City staff to identify which projects are to be funded through the fee program versus those projects that will be developer-built. Harris will work with the City to determine if fees zones are necessary or if one uniform fee can be established. Should various zones be required, Harris will identify which facilities are needed for each zone. Harris will work with the City to determine the phasing requirements for the 5, 10, 15 and 20 year growth assumptions as well. Harris will compile the technical information received from the City into a Storm Drainage Master Plan report.

For Police, Fire, and General City Facilities the Harris Team will review the existing fee study and will meet with the City staff to obtain information related to Police, Fire and General Facilities. The Harris team will develop a methodology for calculating the fees for these facilities. Based on the methodology determined, the Harris Team will prepare a new Public

Facilities Master plan that will summarize the findings of this task. Each facility is described in more detail below:

- **Police** – Per the draft Policies and Operating Assumptions report, a new police station, jail and courthouse facilities were recently constructed with capacity to serve the planning period. Harris will obtain information related to the construction cost and size of these facilities from the City. Under Task 6.4, Harris will analyze the existing surplus of this facility in order to establish a fee to reimburse the City for construction of these facilities. The Harris team will determine the best methodology to use for distributing these costs to new development. Information related to the cost, size and description of these facilities will be incorporated in the project cost spreadsheets. The methodology for calculating the fees for the police facilities will be determined and incorporated into the Public Facilities Master Plan.
- **Fire** – The Fire Department is looking at the needs of fire facilities to serve new development in the City. Harris will coordinate with City staff to receive this information and will incorporate cost estimates into the CIP program templates. The appropriate division of the costs of this fire station will be examined under Task 6.3 to determine if the entire cost of the fire stations can be assigned to new development. The methodology for calculating the fees for the new fire facilities will be determined and incorporated into the Public Facilities Master Plan.
- **Electrical Utilities** – Harris will meet with the City's Electrical Utility Department and provide information related to the development assumptions for the City. The Electrical utility department will prepare sketches of the facilities needed to serve this new growth. Harris will coordinate with them regarding the phasing of the requirements to meet the 5, 10, 15, and 20 year planning horizons. Once the facilities are obtained, Harris will compile the detailed CIP cost estimates and to determine the appropriate split of the facilities' costs between existing and new development. The findings will be incorporated into the Public Facilities Master Plan.
- **General City Facilities** – Harris and GCG will review the existing fee program to determine what facilities are currently funded under this program. We will work with the City to determine the status of these projects and develop a list of any new projects needed to serve the City's needs under General Facilities. The methodology for determining the fee for new growth will be determined. The findings will be incorporated into the Public Facilities Master Plan.
- **Public Art Fee** - The Harris team will review the City's current Public Art Fee Policy and will analyze the methodology that may be used in calculating and collecting this fee. The Public Art Fee Policy will be updated if necessary to reflect any changes.
- **Streets/Transportation** – Fehr & Peers will complete the transportation master plan (TMP). The TMP will be the foundation of the nexus findings for the transportation impact fee. The TMP will document the capital improvements anticipated to be needed within each 5-year increment of land use growth, based on a rational process of evaluating expected transportation demand and identifying improvements needed to

maintain the City's desired Level of Service (LOS). This evaluation will provide the linkage necessary for the City to make the required AB1600 findings regarding the relationship between the need for the public facility and the development on which the fee is levied.

The documentation of existing conditions can primarily be based on work already completed for the General Plan and other recent planning studies. Fehr & Peers will coordinate with City staff on other potential sources of information about operations of the local street system. Based on current information, they may be able to establish that all major intersections are meeting the City's standard of LOS E or better, and thus there would be no existing deficiencies that would require special attention in the IMFP. The one corridor that may warrant further investigation is Kettleman Lane, which is historically Lodi's most heavily traveled arterial. The current scope of work does not anticipate the need to collect additional traffic count data, but we can provide that service if it is needed.

The new development that is anticipated is located in two general areas: south of Harney Lane, and west of Lower Sacramento Road. The General Plan found that much of the needed roadway improvements in Lodi were on the east-west corridors that provide cross-town connections (especially across SR 99), such as Harney Lane, Century Boulevard, and Kettleman Lane. These corridors will directly serve the anticipated new development areas. The goal of the TMP will be to identify which of those General Plan improvements will be needed during the 20-year planning horizon.

A stepped approach will be used to identify the capital improvements. The 20-year needs will be identified by incorporating the 20-year growth forecasts into the Lodi travel model, using the current roadway network (supplemented with any transportation improvements that are already fully funded and expected to be completed independent of future development), and conducting a model run to determine the nature and location of future deficiencies. The 20-year residential growth forecasts are quite similar to those we used for the recent Harney Lane interim improvements analysis. Based on those earlier results, we anticipate that the primary future deficiency is likely to be on Harney Lane itself, which would need to be widened from two to four lanes. We will look at the potential need for the Century Boulevard grade separation and widening to serve as a supplemental east-west corridor, but given the relatively low levels of forecasted new development, that improvement may not be needed in this timeframe.

In addition to the above analysis, we will consult with City staff to determine if there are other capital improvements that should be included in the 20-year transportation CIP. These might include signalization at some existing intersections that are expected to serve increased traffic volumes as a result of new growth, or implementing a signal coordination system along some corridors, or other projects. The results of this process will define the 20-year CIP for transportation improvements.

The number of new vehicle trips generated by the expected 20-year growth will be calculated and then compared to the existing and projected future volumes along Harney

Lane (and any other affected corridors identified through the CIP process described above), and an estimate of how many new trips can be generated before triggering the need for the major improvements will be made. Those results will then be compared to the incremental growth forecasts prepared by others to define which capital improvement projects are needed for the 5-year, 10-year, and 15-year planning horizons. The projects for all of the horizon years will be tabulated and mapped, and documentation prepared to describe the analytical process for identifying those projects. Together, this will constitute the phased TMP that will form the basis for the transportation IMFP.

- **Parks, Recreation, and Open Space** – Vallier Design Associates (VDA) will look at the total projected population of Lodi and confirm the amount of parks and open space required by apply the level of service (LOS) standard measured in acres per 1,000 people. The LOS standard acts as an allocation mechanism for the delivery of park land and basic recreation facilities throughout a community. From this number, VDA will determine the park land deficit, which is the difference between park land that is currently provided and what is required by the LOS standard calculation.

Next, VDA will determine the types of parks that will meet the park land demand based on the types of parks the City has, their locations, and facilities provided. There are a variety of park types that can help meet the park land demand. Each type is associated with a service area, the distance that park users can be expected to travel to reach a park of this type. Service areas are placement standards set by either the General Plan or "rule-of-thumb" standards provided by the National Parks and Recreation Association that assist in locating facilities. VDA will review the existing park and open space facilities and their locations to determine underserved areas where new facilities should be placed and will determine from the placement, the types of facilities that should be provided to meet recreational needs. Once the locations, sizes, and program elements are determined for the proposed parks, VDA will prepare a typical site plan for each park type and a list of facilities for each site along with a detailed description and cost estimate for the proposed site improvements. In addition, VDA will evaluate existing facilities and determine required improvements to those sites along with associated costs for the renovations. VDA will work with the team to determine trigger points for implementation of site improvements at existing facilities and construction of new facilities.

Meetings with City staff and the Recreation Committee will be held under the project management task above in order to ensure that the City's needs are being met with the planned facilities. Harris and VDA will work with the City to determine the split between neighborhood parks that the developers may build and receive credits for and larger, regional facilities for which the City will collect fees and construct. In addition, the use of joint-use drainage basins will be explored and the funding plan for these will be detailed.

Under this task, Harris will also develop the capital improvement project templates that will be used to estimate the cost for each of the infrastructure projects. These templates will be

provided to the City for approval prior to beginning the cost estimating process. The templates will be set up so that there is a link to a universal unit cost spreadsheet. This will allow unit costs to easily be updated or modified both now and in future updates.

Two meetings will be held during this time to review the facility layouts, infrastructure phasing, and LOS standards. A technical memorandum documenting the outcome of the meetings will be distributed to the team. These meetings are included in Task 1.4

Task 5 – Phasing Plan

Task 5.1 – Develop Phasing Plan

The Harris team, through coordination with City staff, will estimate development phasing in the City in 5-year planning horizons over the next 20 years. GCG will review and incorporate the growth policies set forth in the City's 2011 Growth Management Plan when developing the phasing plan. Based on the Harris team's development forecast, the inventory of current, entitled, and planned developments, input from the development community, and consideration of potential constraints regarding infrastructure phasing, the Harris team will develop a phasing plan. The phasing plan will be presented to the City at two workshops, which are included in Task 1.4. The phasing plan will be updated based on a consensus from all interested parties.

For the development phasing plans that are established, the infrastructure needs for each of those growth periods will be determined by the team made up of City staff, the City's technical consultants, and the Harris team. The phasing of the infrastructure for each period will be incorporated in the cash flow analysis.

Task 6 – Financing Plan

Task 6.1 – Define Financing Parameters

GCG will begin the financing plan analysis by reviewing the City's existing fee program. In particular, GCG will review all fee account revenues and expenditures to determine what facilities in the City's capital improvement plan have been fully or partially financed and what remaining fund balances can be applied to future facilities. GCG will also review existing development agreements and outstanding credits or reimbursements due to developers, since these may have an impact on the updated fee program. GCG will also work with City staff to determine whether alternate funding sources, such as federal, state, or Caltrans funding, exist for any facilities included in the fee program.

Task 6.2 – Identify Required Public Services and Facilities

Harris will compile a list of all the project identified in Task 4.1 above and prepare cost estimates for all the facilities. The CIP sheet prepared for each facility will discuss the timing of the project necessary to meet the City's LOS targets. Harris will compile maps of all the facilities as well.

Once development impact fees are calculated in Task 6.7, it may be necessary to review some of the projects and costs established during this task to work on ways to bring the fee to an acceptable amount.

Task 6.3 – Examine Existing Deficiencies

Harris will review the proposed projects and will work with City staff to identify projects that remedy existing deficiencies rather than provide new capacity. In addition, it is likely that there are projects for which part of the project serves to mitigate an existing deficiency but the other portion of the project is attributable to new growth. These splits will be determined and the funding from other sources will be clearly identified as separate from the fee program funding. A technical memorandum will be prepared that details the findings of this task.

Task 6.4 – Examine Existing Surpluses

Harris will review the proposed projects and will work with City staff to determine which projects create excess capacity. In other words, projects that create capacity that serves development beyond the current planning horizon will be identified. The split between the fee program funding and future funding will be calculated and the funding from future sources clearly identified. A technical memorandum will be prepared that details the findings of this task.

Task 6.5 – Develop Dwelling Unit Equivalent (DUE) Schedules

Harris will review the assumptions made in each of the master plans regarding demand factors and will put together a DUE schedule based on generation and demand rates. The DUE schedule forms the basis for the calculation of the fees and is a critical step in the process. A single-family home will be considered 1 DU and all other land uses will be based off their equivalent use compared to that single-family unit. Non-residential land use DUEs will be calculated based on the demand generated from 1,000 SF of building area as compared to that single-family unit.

Fehr & Peers will assist Harris with developing the DUE schedule for traffic. There may be interest in more refined trip generation techniques that are now available to account for the context of new development and its effect on transportation demand. For instance, a single-family dwelling with good pedestrian access to nearby retail opportunities and services can generate fewer vehicle trips than a similar house located in a residential subdivision with no such access or amenities. Accounting for these factors and translating them into reduced fees can help to incentivize higher-density, mixed-use, infill development that may achieve other City goals.

The spreadsheet and back-up methodology will be submitted to the City. In addition, Policy No. 6 for Wastewater capacity charges will be reviewed and updated.

Task 6.6 – Prepare Burden Analysis

Once Harris has identified all the required facilities and costs, GCG will calculate the preliminary fees. GCG will apply the DUE and demand factors to allocate a fair share portion of the costs to

each land use category. As part of this analysis, the Infill areas will be reviewed and a methodology for their fees will be determined. In conjunction with this preliminary fee calculation, GCG will conduct, with input from City staff, a fee comparison analysis that includes five cities. The comparison analysis will look at the complete fee burden, including funding from community facilities districts (CFDs) and assessment districts (ADs), for five cities and Lodi. A review of all fees and funding sources is the most valid approach since this will provide a true comparison of the fee burden. The comparison analysis will include regional, city, and school district impact fees, building and environmental fees, and funding from CFDs and ADs levied on a single family unit. The Harris team will present the preliminary fees and fee comparison analysis to City staff for discussion and comment.

Task 6.7 – Prepare Forecast of Development Impact Fees

GCG will develop a cash flow model that will incorporate all forecast growth, phased facilities costs, existing fee fund balances, and preliminary IMFP fees and other potential funding sources. The model will illustrate where future revenue shortfalls may occur and whether interfund borrowing can be used to close the funding gaps for priority projects. In some cases, interfund borrowing will not close the funding gap. In this case, the cash flow model will show when funding from other sources, such as developer equity, CFDs, or ADs, may be necessary. GCG will suggest solutions to mitigate all funding shortfalls and will run up to three cash flow iterations that show various options. The results of each cash flow iteration will be presented to City staff for comment. Based on comments from City staff, GCG will make the final calculation of the fees for the IFMP. It is assumed that two meetings with City staff will occur during this process. Those meetings are included in Task 1.4.

Task 6.8 – Adjust the Fee Level

Harris and GCG will discuss methodologies for resolving cash flow issues in order for new project infrastructure to be built at the time that it is needed. This task and Task 6.7 overlap each other and will be looked at in conjunction with one another.

Task 6.9 – Prepare Finance Plan Report

Harris and GCG will compile a technical memorandum that summarizes the facility plans and cash flow analysis into a finance plan report. The report will also include fees determined pursuant to recent changes in state law that require a methodology within a fee program to account for reducing a fee accordingly when development meets a set of specific "smart growth" characteristics. The Harris team will propose a methodology that would comply with the requirements set forth in Government Code section 66005.1 to calculate fees based on the reduced trips resulting from transit-oriented development. The updated fee report will include recommended guidelines for selection of projects that would be compliant with the law's requirements and, therefore, be subject to the reduced fees.

The report will be in the form of a technical memorandum that includes maps, charts, and detailed summary tables of the facilities, costs, and the resulting impact fees. The draft report

will be presented to City staff for comment. Once comments are received, a final financing plan report will be provided to the City.

Task 7 – Administrative Draft, Draft, and Final Impact Fee Mitigation program Report

Task 7.1 – Prepare Administrative Draft and Draft IMFP

Harris and GCG will prepare the IMFP report which will incorporate all decisions, assumptions, methodologies and calculations made over the course of the project. Specifically, the report will (i) outline the nexus findings associated with calculation of the fees, (ii) provide information regarding the facilities and costs included in the calculation and the application of other funding sources, if any, (iii) identify the projections for future development that were used as a basis in calculating the fees, and (iv) identify any existing deficiencies and ensure that the cost of the facilities needed to eliminate the deficiency is not included in the fee calculation. The report will also identify the cost allocation methodology used to determine the fees and discuss the accounting, reporting, and administrative procedures that are required pursuant to the Mitigation Fee Act.

The following will be included in the IMFP Report:

- **Executive Summary and Introductory Sections** – this section will summarize the findings of the report, it will also describe the methodology of the report, it will include a general description of the City and the anticipated growth, it will discuss the IMFP development process, and it will include any other pertinent information that helps to define the project. Any maps, tables, or figures that help to better define this section will be included.
- **Technical Sections** – This section will include the technical reports and findings for water, wastewater, storm drainage, transportation, police, fire, parks, Electric and General Facilities. Each of the technical sections will include a description of the level of service standard, a summary table of the DUEs, a discussion of the methodology used to derive DUEs, the phased Capital Improvement Plan including trigger points, discussion of the planned facilities, discussion of the fee zones (if any), the AB1600 findings, and a map showing the facilities.
- **Finance Section** – This section will include a description of the financing parameters, a summary of the DUE schedules, an overview of the existing system deficiencies and surpluses, a discussion of the development impact fees including methods for updating the fees, anticipated absorption tables, and cash flow tables.

Once the administrative draft of the IMFP has been prepared, 10 hard copies and one electronic copy will be submitted to the City for review. The Harris team will hold workshops with City staff as needed to present the findings. It is anticipated that the first draft of the administrative report will be reviewed by Public Works. Any questions or issues will be addressed and a second

administrative draft will be prepared for review by other City departments. It is assumed that two workshops will be attended as part of this process.

After all comments on the administrative draft are received, a draft report will be produced. This report will be presented in workshops with City staff, landowners, developers, City Council, Recreation Commission, and the Budget Committee. These meetings are covered under Task 1.5 above.

After all comments have been received on the draft, the Harris team will respond to comments and will prepare the final draft IMFP. 25 copies of the final draft IMFP report and one electronic copy will be submitted to the City.

It is assumed that all meetings with the City and the development community are included in Task 1.4.

Task 7.2 – Prepare Final IMFP and Update Ordinance

Once all comments have been received, those comments will be incorporated into the final IMFP. Two copies (one photo-ready copy and one electronic copy) of the report will be submitted to the City. Harris and GCG will attend up to four council meetings as necessary to assist in the adoption of the IMFP. These meetings are included in Task 1.5.

The Harris Team will also assist the City in the Review and update of their impact fee ordinance in accordance with the decisions made as part of this process.

City of Lodi
Development Impact Mitigation Fee Study
Scope of Work

| Task | Harris & Associates | | | | | Goodwin Consulting Group | | | | | Fehr and Peers | | | | | Vallier Design Associates | | | | Total |
|---|---------------------|-------------------------|-----------------|------------------|-------------------|--------------------------|-----------------|----------------|------------|-------------------|----------------|-----------|------------------|------------------------|------------------|---------------------------|----------------------------|-----------------------------|------------------|-------------------|
| | Project Director | Technical Advisor (PDS) | Project Manager | Project Engineer | Total | Principal-in-charge | Project Manager | Vice President | Associate | Total | Principal | Associate | Project Engineer | Graphics/Admin Support | Total | Principal | Senior Landscape Architect | Project Landscape Architect | Total | |
| | \$ 250 | \$ 205 | \$ 190 | \$ 120 | | \$ 240 | \$ 225 | \$ 200 | \$ 170 | | 220 | 175 | 115 | 110 | | \$ 165 | \$ 130 | \$ 70 | | |
| Task 1 Project Management | 2 | 37 | 160 | 44 | \$ 41,865 | 44 | 77 | 22 | 11 | \$ 34,155 | 24 | 8 | 4 | 10 | \$ 8,240 | 14 | 8 | 0 | \$ 1,350 | \$ 87,810 |
| 1.1 Kick-off Meeting and Project Memorandum | 2 | 2 | 16 | 8 | \$ 4,810 | 2 | 5 | 4 | | \$ 2,405 | 6 | 4 | | 2 | \$ 2,240 | 2 | 0 | | \$ 330 | \$ 9,885 |
| 1.2 Project Work Plan | | 2 | 8 | | \$ 1,930 | | 4 | | | \$ 900 | | | | | \$ - | | | | \$ - | \$ 2,830 |
| 1.3 Preparation of Monthly Progress Reports (Assumes 10 Months for Project Duration) | | | 24 | | \$ 4,560 | | | | | \$ - | | | | | \$ - | | | | \$ - | \$ 4,560 |
| 1.4 Project Status Meetings and Meeting Minutes (Assumes 12 meetings) | | 12 | 60 | 12 | \$ 15,300 | 14 | 40 | 10 | 5 | \$ 16,210 | 12 | 4 | 4 | 2 | \$ 4,020 | 6 | | | \$ 890 | \$ 35,520 |
| 1.5 Presentations to City Council, Planning Commission, Recreation Commission and Budget Committee (7 Meetings) | | 21 | 42 | 24 | \$ 15,165 | 28 | 28 | 8 | 6 | \$ 15,840 | 6 | 0 | 0 | 6 | \$ 1,880 | 6 | 8 | | \$ 2,030 | \$ 34,815 |
| Task 2 Policies and Operating Assumptions Report | 1 | 0 | 40 | 40 | \$ 12,650 | 1 | 2 | 3 | 12 | \$ 3,330 | 4 | 4 | 4 | 2 | \$ 2,260 | 0 | 0 | 0 | \$ - | \$ 16,240 |
| 2.1 Prepare a Policies and Operating Assumptions Report | 1 | | 40 | 40 | \$ 12,650 | 1 | 2 | 3 | 12 | \$ 3,330 | 4 | 4 | 4 | 2 | \$ 2,260 | | | | \$ - | \$ 18,240 |
| Task 3 Develop Land-Use Forecast | 0 | 0 | 20 | 80 | \$ 13,400 | 0 | 2 | 3 | 14 | \$ 3,670 | 0 | 0 | 0 | 0 | \$ - | 0 | 0 | 0 | \$ - | \$ 17,070 |
| 3.1 Assess Potential Fee Zone Geography | | | 8 | 40 | \$ 6,320 | | | | | \$ - | | | | | \$ - | | | | \$ - | \$ 6,320 |
| 3.2 Inventory Approved and Proposed Development Projects | | | 8 | 40 | \$ 6,320 | | | | | \$ - | | | | | \$ - | | | | \$ - | \$ 6,320 |
| 3.3 Prepare Citywide Development Forecasts | | | 2 | | \$ 380 | 1 | 1 | 1 | 4 | \$ 1,345 | | | | | \$ - | | | | \$ - | \$ 1,725 |
| 3.4 Prepare Growth Forecast | | | 2 | | \$ 380 | | 1 | 2 | 10 | \$ 2,325 | | | | | \$ - | | | | \$ - | \$ 2,705 |
| Task 4 Master Plan Documents/Capital Improvement Plans | 6 | 10 | 340 | 400 | \$ 116,900 | | 14 | 2 | 20 | \$ 6,950 | 12 | 8 | 80 | 24 | \$ 15,880 | 66 | 40 | 80 | \$ 20,280 | \$ 150,920 |
| 4.1 Coordinate Master Plan Documents/Capital Improvement Plans | | | | | \$ - | | | | | \$ - | | | | | \$ - | | | | \$ - | \$ - |
| Water | 1 | 1 | 40 | 40 | \$ 12,855 | | | | | \$ - | | | | | \$ - | | | | \$ - | \$ 12,855 |
| Wastewater | | 1 | 40 | 60 | \$ 15,005 | | | | | \$ - | | | | | \$ - | | | | \$ - | \$ 15,005 |
| Storm Drainage | | 1 | 40 | 40 | \$ 12,605 | | | | | \$ - | | | | | \$ - | | | | \$ - | \$ 12,605 |
| Police | | 1 | 24 | 24 | \$ 7,645 | | 4 | | 4 | \$ 1,580 | | | | | \$ - | | | | \$ - | \$ 9,225 |
| Fire | | 1 | 24 | 24 | \$ 7,645 | | 4 | | 4 | \$ 1,580 | | | | | \$ - | | | | \$ - | \$ 9,225 |
| Electrical Utilities | 1 | 1 | 60 | 100 | \$ 23,855 | | | | | \$ - | | | | | \$ - | | | | \$ - | \$ 23,855 |
| General City Facilities | 1 | 1 | 40 | 40 | \$ 12,855 | | 4 | | 4 | \$ 1,580 | | | | | \$ - | | | | \$ - | \$ 14,435 |
| Public Art Fee | 1 | 1 | 24 | 40 | \$ 9,565 | | 2 | 2 | 8 | \$ 2,210 | | | | | \$ - | | | | \$ - | \$ 11,775 |
| Transportation | 1 | 1 | 24 | 16 | \$ 6,935 | | | | | \$ - | 12 | 8 | 80 | 24 | \$ 15,880 | | | | \$ - | \$ 22,815 |
| Parks, Recreation and Open Space | 1 | 1 | 24 | 16 | \$ 6,935 | | | | | \$ - | | | | | \$ - | | | | \$ - | \$ 22,815 |
| Task 5 Phasing Plan | 0 | 0 | 40 | 60 | \$ 14,800 | 2 | 3 | 3 | 34 | \$ 4,135 | 0 | 0 | 0 | 0 | \$ - | 66 | 40 | 60 | \$ 20,280 | \$ 27,225 |
| 5.1 Develop Phasing Plan | | | 40 | 60 | \$ 14,800 | 2 | 3 | 3 | 34 | \$ 4,135 | 0 | 0 | 0 | 0 | \$ - | 66 | 40 | 60 | \$ 20,280 | \$ 27,225 |
| Task 6 Prepare Financing Plan | 2 | 14 | 128 | 162 | \$ 45,550 | 2 | 27 | 42 | 155 | \$ 42,955 | 4 | 4 | 12 | 8 | \$ 3,840 | 0 | 0 | 0 | \$ - | \$ 92,315 |
| 6.1 Define Financing Parameters | | | | | \$ - | | | | 15 | \$ 4,505 | | | | | \$ - | | | | \$ - | \$ 4,505 |
| 6.2 Identify Required Public Services and Facilities | | 4 | 40 | 80 | \$ 18,020 | | | | | \$ - | | | | | \$ - | | | | \$ - | \$ 18,020 |
| 6.3 Examine Existing Deficiencies | | 2 | 16 | 20 | \$ 5,850 | | | | | \$ - | | | | | \$ - | | | | \$ - | \$ 5,850 |
| 6.4 Examine Existing Surpluses | | 2 | 16 | 20 | \$ 5,850 | | | | | \$ - | | | | | \$ - | | | | \$ - | \$ 5,850 |
| 6.5 Develop Dwelling Unit Equivalent (DUE) Schedule | | 2 | 16 | 8 | \$ 4,410 | | | | | \$ - | 4 | 4 | 12 | 8 | \$ 3,840 | | | | \$ - | \$ 8,250 |
| 6.6 Prepare Burden Analysis | | | 16 | | \$ 3,040 | 3 | 11 | 20 | 89 | \$ 22,325 | | | | | \$ - | | | | \$ - | \$ 25,365 |
| 6.7 Prepare Forecast of Development Impact Fees | | | 2 | | \$ 380 | 2 | 10 | 15 | 40 | \$ 12,530 | | | | | \$ - | | | | \$ - | \$ 12,910 |
| 6.8 Adjust the Fee Level | | | 4 | | \$ 760 | | | | | \$ - | | | | | \$ - | | | | \$ - | \$ 760 |
| 6.9 Prepare Finance Plan Report | 2 | 4 | 16 | 24 | \$ 7,240 | 2 | 3 | 3 | 11 | \$ 3,625 | | | | | \$ - | | | | \$ - | \$ 10,865 |
| Task 7 Prepare Admin Draft, Draft and Final IMFP | 4 | 10 | 70 | 150 | \$ 34,350 | 5 | 12 | 23 | 55 | \$ 18,690 | 0 | 0 | 0 | 0 | \$ - | 0 | 0 | 0 | \$ - | \$ 52,440 |
| 7.1 Prepare Admin Draft IMFP | 2 | 6 | 40 | 120 | \$ 23,730 | 4 | 8 | 16 | 40 | \$ 13,350 | | | | | \$ - | | | | \$ - | \$ 37,080 |
| 7.2 Prepare Final IMFP and Update Ordinance | 2 | 4 | 30 | 30 | \$ 10,620 | 2 | 4 | 4 | 15 | \$ 4,730 | | | | | \$ - | | | | \$ - | \$ 15,950 |
| Other Expenses | 0 | 0 | 0 | 0 | \$ 2,500 | 0 | 0 | 0 | 0 | \$ 1,500 | 0 | 0 | 0 | 0 | \$ 1,500 | 0 | 0 | 0 | \$ - | \$ 6,500 |
| Reimbursable Expenses | | | | | \$ 2,500 | | | | | \$ 1,500 | | | | | \$ 1,500 | | | | \$ - | \$ 6,500 |
| Total: | 14 | 71 | 785 | 925 | \$ 281,015 | 63 | 137 | 98 | 281 | \$ 114,815 | 44 | 24 | 100 | 44 | \$ 31,720 | 80 | 48 | 60 | \$ 23,640 | \$ 451,180 |

Notes:

- All meetings are assumed to be covered under Task 1. The scope for Harris & GCG assumes attendance at 10 meetings with the City plus attendance at 7 public meetings where presentations will be given. The scope for VDA and F&P assumes attendance at 3 meetings with the City and attendance at 1 public meeting.
- Under Task 7, 5 submittals of the IMFP is assumed. This includes 2 versions of the administrative draft, draft, final draft and final report.
- Assumes the only additional technical analysis needed to complete the master planning work is for parks and traffic. Harris will use the City's technical analysis to help compile the master plans reports for water, wastewater, storm drainage and the electrical utility. Harris & GCG will prepare the master plans for police, fire, and general city facilities.
- An allowance for reimbursable expenses has been made in accordance with the assumptions in the scope of work. Should additional copies of reports be needed, the cost will be directed billed to the Client.



Harris & AssociatesSM

Shaping the Future, One Project at a TimeSM

**EXHIBIT B
RANGE OF HOURLY RATES:
ALL EMPLOYEES**

Effective January 1 – December 31, 2011

**ENGINEERING DESIGN AND
MUNICIPAL SERVICES GROUPS**

HOURLY RATE

| | |
|-------------------|-----------|
| Project Directors | \$190-260 |
| Project Managers | 150-260 |
| Project Engineers | 125-195 |
| Technical Support | 75-130 |
| Administration | 65-95 |

CONSTRUCTION / PROGRAM MANAGEMENT

HOURLY RATE

| | |
|------------------------|-----------|
| Project Directors | \$190-260 |
| Project Managers | 150-260 |
| Construction Managers | 125-200 |
| Resident Engineers | 150-200 |
| Construction Engineers | 110-200 |
| Scheduling Engineers | 110-190 |
| Cost Engineers | 110-190 |
| Inspectors * | 100-160 |
| Technicians | 90-160 |
| Administration | 65-95 |

Notes: Rates are subject to adjustment due to promotions during the effective period of this schedule. A new rate schedule will become effective January 1, 2012 and on the 1st of January every year thereafter. Unless otherwise indicated in the cost proposal, hourly rates include most indirect costs, such as equipment, computers, communications and reproduction (except large quantities such as construction documents for bidding purposes).

* Inspectors working in the State of California are subject to the Prevailing Wage Rates established for that area.

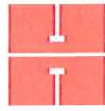
221 West Pine Street, P.O. Box 3006, Lodi, California, 95241-1910

INSTRUCTIONS/REQUIREMENTS FOR INSURANCE COVERAGE

1. All contractors/developers who have contracts or agreements with the City are required to carry general liability/automobile insurance.
2. A duplicate or certificate of insurance shall be delivered to the City prior to starting any work on a project.
3. Each certificate shall contain satisfactory evidence that each carrier is required to give the City of Lodi notice 30 days prior to the cancellation or reduction in coverage of any policy.
4. The insurance certificate must state, on its face or as an endorsement, a description of the project that it is insuring.
5. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements, and shall specifically bind the insurance carrier.
6. The CITY OF LODI, ITS ELECTED AND APPOINTED BOARDS, COMMISSIONS, OFFICERS, AGENTS, EMPLOYEES AND VOLUNTEERS must be named as additional insured on an endorsement attached to the certificate of insurance. (THE CITY OF LODI, ITS ELECTED AND APPOINTED BOARDS, COMMISSIONS, OFFICERS, AGENTS, EMPLOYEES AND VOLUNTEERS MUST BE NAMED THE ADDITIONAL INSURED.)
7. Both the street address and the post office box of the CITY OF LODI must be shown along with Number 6 above: 221 West Pine Street, P.O. Box 3006, Lodi, California, 95241-1910.
8. In addition to the additional named insured endorsement on the policy of insurance, said insurance policy shall be endorsed to include the following language:

"Such insurance as is afforded by the endorsement for the additional insureds shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the coinsurance afforded by this endorsement."
9. The minimum limits of such insurance shall be \$1,000,000 Bodily Injury each occurrence/aggregate, \$1,000,000 Property Damage each occurrence/aggregate, or \$1,000,000 combined single limit.

Automobile insurance \$1,000,000:
Contractors must carry automobile insurance;
Developers must carry auto insurance only if their vehicles are used on site.
10. If the limits of coverage are not the amounts specified in Number 9 above, and/or if the City is not named as an additional insured on the attachment to the certificate of insurance, and/or if the primary insurance endorsement is not attached, the City will not accept the certificate and a corrected certificate must be furnished to the City.
11. Contractor/Developer agrees and stipulates that any insurance coverage provided to the City of Lodi shall provide for a claims period following termination of coverage which is at least consistent with the claim period or statutes of limitations found in the California Tort Claims Act (California Government Code Section 810 et seq.).
12. "Claims made" coverage requiring the insureds to give notice of any potential liability during a time period shorter than that found in the Tort Claims Act shall be unacceptable.
13. No contract agreement will be signed nor will any work begin on a project until the proper insurance certificate is received by the Public Works Department. **Please be sure your insurance company sends this certificate to the attention of the Public Works Department.**



Harris & AssociatesSM
*Shaping the Future, One Project at a Time*SM

April 4, 2012

Wally Sandelin
 City Engineer
 Public Works Department
 221 West Pine Street
 Lodi, CA 95241-1910

**SUBJECT: Proposed Amendment 1
 IMFP Update**

Dear Wally,

This letter serves as a request for a contract amendment in the amount of \$30,000 for the "Update of the Impact Mitigation Fee Program" dated March 29, 2011 between the City of Lodi and Harris and Associates, Inc. The amended scope of work and budget are attached.

The change in scope increases the fee for the project by \$30,000. Table 1 shows a detailed breakdown of the hours and costs for the contract amendment. Incorporation of the amendment will increase the total budget from \$451,190 to \$481,190.

Over the past 12 months, we have been working diligently with the building and development community to build consensus on the structure and scope of the fee program. This has resulted in significant additional and unanticipated work and delay to develop the final fees for water, wastewater, storm drainage, parks, transportation, and electric. In addition, preparation of a new Bike Master Plan has been added to the program. Some of the changes requested by the City include:

1. Additional meetings and project management services
2. Additional cost estimating associated with changing project descriptions and program scope
3. Additional analysis resulting from changes to the program scope in the areas of water, wastewater, storm drainage, parks, transportation and electric.
4. Updating the master plans to be consistent with the changes to the scope of the fee program and adding the Bike Master Plan.

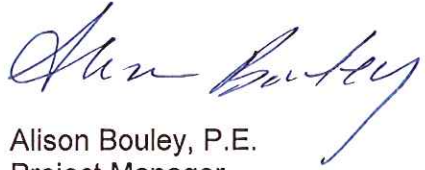
In order to complete these tasks, we request an amendment of \$30,000 for our team (Harris and Goodwin), which we estimate would be sufficient to complete the project. The following assumptions were made in determining the amount of this amendment:

- Four additional stakeholder meetings.
- No further/additional changes to the fees or methodology
- Two additional rounds of edits to the IMFP document
- One additional round of edits on the Master Plans (beyond the City's first set of edits).
- Completion of our work and adoption of the fee program in August 2012

Except as specifically modified by this amendment, all terms and conditions of the original agreement between the City and Harris and Associates remain in effect. Additional services will be billed on a time and materials basis with a not to exceed amount of \$30,000.

Please feel free to email me at abouley@harris-assoc.com or call me at 209.833.3310 if you have any questions.

Sincerely,



Alison Bouley, P.E.
Project Manager



Bob Guletz, P.E.
Project Director



Table 1 - Amended Exhibit B Estimated Work Effort and Cost

City of Lodi

IMFP Update



| Task No. | Task Description | Harris & Associates | | Goodwin Consulting | | Total Cost |
|----------|---|---------------------|------------------|--------------------|-----------|------------------|
| | | Project Manager | Project Engineer | Project Manager | Associate | |
| 8 | Modifications to Impact Fee Program | | | | | |
| | Modify Storm Drainage Fee Calculations | 4 | 6 | 4 | 4 | \$ 3,060 |
| | Modify Parks costs, calculations and study | 4 | 6 | 4 | 4 | \$ 3,060 |
| | Modify traffic Costs and fees | 4 | 4 | 4 | 4 | \$ 2,820 |
| | Review water methodology and update fees and studies | 12 | 12 | 8 | 8 | \$ 6,880 |
| | Review wastewater methodology and update fees and studies | 12 | 12 | 8 | 8 | \$ 6,880 |
| | Additonal Meetings and Project management | 12 | 8 | 12 | 8 | \$ 7,300 |
| | Total Amendment | | | | | \$ 30,000 |

1. AA# _____
2. JV# _____

| CITY OF LODI APPROPRIATION ADJUSTMENT REQUEST | | | |
|--|---|----------|------------|
| TO: | Internal Services Dept. - Budget Division | | |
| 3. FROM: | Rebecca Areida-Yadav | 5. DATE: | 04/05/2012 |
| 4. DEPARTMENT/DIVISION: Public Works | | | |

| 6. REQUEST ADJUSTMENT OF APPROPRIATION AS LISTED BELOW | | | | | |
|--|--------|-------------|-----------|------------------|--------------|
| | FUND # | BUS. UNIT # | ACCOUNT # | ACCOUNT TITLE | AMOUNT |
| A. SOURCE OF FINANCING | 3251 | | 5037 | Reimb-Measure K | \$ 50,000.00 |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| B. USE OF FINANCING | 325 | 325315 | 7323 | Bike Master Plan | \$ 50,000.00 |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

| 7. REQUEST IS MADE TO FUND THE FOLLOWING PROJECT NOT INCLUDED IN THE CURRENT BUDGET |
|---|
| <p>Please provide a description of the project, the total cost of the project, as well as justification for the requested adjustment. If you need more space, use an additional sheet and attach to this form.</p> <p>Amendment to the professional services agreement with Harris and Associates for the Bike Master Plan related to the Impact Mitigation Fee update.</p> |
| <p>If Council has authorized the appropriation adjustment, complete the following:</p> <p>Meeting Date: _____ Res No: _____ Attach copy of resolution to this form.</p> <p>Department Head Signature: <u>Rebecca Areida-Yadav</u></p> |

| 8. APPROVAL SIGNATURES |
|--|
| |
| Deputy City Manager/Internal Services Manager _____ Date _____ |

Submit completed form to the Budget Division with any required documentation.
Final approval will be provided in electronic copy format.

RESOLUTION NO. 2012-_____

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING CITY MANAGER TO EXECUTE
AMENDMENT TO PROFESSIONAL SERVICES
AGREEMENT FOR DEVELOPMENT IMPACT
MITIGATION FEE PROGRAM UPDATE AND FURTHER
APPROPRIATING FUNDS

=====

WHEREAS, on March 16, 2011, City Council approved a Professional Services Agreement with Harris and Associates in the amount of \$451,190 to update the Development Impact Mitigation Fee Program pursuant to adoption of the 2010 General Plan; and

WHEREAS, over the past 24 months, the project team has diligently worked with the building and development community to build consensus on the structure and scope of the fee program, resulting in significant additional and unanticipated work and delay to develop the final fees for water, wastewater, storm drainage, parks, transportation, and electric. In addition, preparation of a new Bike Master Plan has been added to the program; and

WHEREAS, staff recommends executing an amendment to the Professional Services Agreement for the Development Impact Mitigation Fee Program with Harris and Associates in the amount of \$30,000 and appropriating funds in the amount of \$50,000.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute Amendment No. 1 to the Professional Services Agreement for Development Impact Mitigation Fee Program Update with Harris and Associates, of Tracy, California, in the amount of \$30,000; and

BE IT FURTHER RESOLVED that funds in the amount of \$50,000 be appropriated from Measure K Bicycle Program Non-Competitive funds.

Dated: April 18, 2012

=====

I hereby certify that Resolution No. 2012-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held April 18, 2012, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk



CITY OF LODI COUNCIL COMMUNICATION

TM

AGENDA TITLE: Adopt Resolution Approving the Northern California Power Agency Legislative and Regulatory Affairs Program Agreement, and Authorizing the City Manager to Execute Said Agreement

MEETING DATE: April 18, 2012

PREPARED BY: Electric Utility Director

RECOMMENDED ACTION: Adopt a resolution approving the Northern California Power Agency Legislative and Regulatory Affairs Program Agreement, and authorizing the City Manager to execute said agreement.

BACKGROUND INFORMATION: Since the inception of the Northern California Power Agency (NCPA), the legislative and regulatory activities of the agency have been fundamental for the purpose of managing substantial public investment, and protecting the public power business model through preservation of local control.

The attached Legislative and Regulatory Affairs Program Agreement (L&RPA) represents an important step toward ensuring clear and consistent agreements for programs throughout NCPA. While many important agency-wide governance issues have been addressed during previous membership deliberations, the structure of the L&R program area has not yet been formalized in the same way. This agreement provides this needed programmatic structure by:

- Ensuring that all NCPA members, because of their shared interest in protecting NCPA assets and the public power business model, participate in the L&R Program as outlined under the terms of the agreement with termination of the L&RPA being concurrent with membership in NCPA.
- Establishing three program areas: 1) General Legislative and Regulatory Affairs Program; 2) Specific Legislative and Regulatory Affairs Programs, and; 3) Member Services Program.
 - All NCPA members support the General Program which includes Legislative, Regulatory and Judicial Action.
 - The Specific Programs allows for the costs of project-specific Public Benefits and Judicial Action activities to be paid for by project participants only.
 - The Member Services program ensures all members support the costs of one staff person for this program, and provides flexibility to initiate public benefits projects paid for by the beneficiaries of the project.
- Clarifying that NCPA Pool-specific regulatory efforts currently governed by separate cost allocation methodologies are unaffected by the agreement.
- Requiring NCPA Commission approval of new L&R Judicial Action initiatives, and ensuring that NCPA members can opt out of these initiatives as they are formed, or withdraw during the

APPROVED: _____
Konradt Bartlam, City Manager

proceeding with appropriate notice and fulfillment of contractual financial obligations related to the initiative that were entered into prior to withdrawal.

- Providing the NCPA Commission with discretion to allow for exemptions or special terms under the agreement for new NCPA members due to unique, special, or legal circumstances.

Utility staff respectfully recommends approval of the NCPA Legislative & Regulatory Program Agreement.

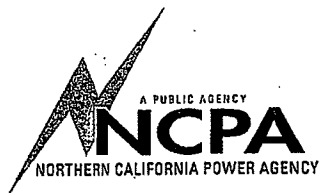
FISCAL IMPACT: Not applicable.

FUNDING: Not applicable.

Elizabeth A. Kirkley
Electric Utility Director

PREPARED BY: Rob Lechner, Manager, Customer Service & Programs

EK/RSL/lst



651 Commerce Drive
Roseville, CA 95678

phone (916) 781-3636
fax (916) 783-7693
web www.ncpa.com

Commission Staff Report

AGENDA ITEM NO.: 24

Date: March 15, 2012
To: NCPA Commission
Subject: Commission Approval of NCPA Legislative and Regulatory Affairs Program Agreement

Background

Since the inception of NCPA, the legislative and regulatory activities of this agency have been fundamental to our purpose of managing substantial public investment, and protecting the public power business model through preservation of local control. The attached Legislative and Regulatory Affairs Program Agreement recognizes the integral role that this program plays today in protecting more than \$1 billion in power resource and infrastructure investments against potentially onerous legislative and regulatory measures that could undermine the value of these projects and lead to increased ratepayer costs.

The NCPA Legislative and Regulatory Affairs Program Agreement represents an important step toward ensuring clear and consistent agreements for programs throughout the agency. While many important agency-wide governance issues have been addressed during previous membership deliberations, the structure of the NCPA Legislative and Regulatory Affairs program area has not yet been formalized in the same way. This agreement provides this needed programmatic structure by:

- Ensuring that all NCPA members, because of their shared interest in protecting agency assets and the public power business model, participate in the Legislative and Regulatory Affairs Program as outlined under the terms of this agreement. Termination of this agreement is concurrent with membership in the agency.
- Establishing three program areas: 1) the General Legislative and Regulatory Affairs Program; 2) the Specific Legislative and Regulatory Affairs Program, and; 3) the Member Services Program. All members support the General Program which includes Legislative, Regulatory and Judicial Action. The Specific Program allows for the costs of project-specific Public Benefits and Judicial Action activities to be paid for by project participants only. The Member Services Program ensures all members support the costs of one staff person for this program, and provides flexibility to initiate public benefits projects paid for by the beneficiaries of the project.
- Clarifying that NCPA Pool-specific regulatory efforts currently governed by separate cost allocation methodologies are unaffected by this agreement.

- Requiring Commission approval of new Legislative & Regulatory Affairs Judicial Action initiatives, and ensuring that NCPA members can opt out of these initiatives as they are formed, or withdraw during the proceeding with appropriate notice and fulfillment of contractual financial obligations related to the initiative that were entered into prior to withdrawal.
- Providing the Commission with discretion to allow for exemptions or special terms under this agreement for new NCPA members due to unique, special, or legal circumstances.

The provisions of this agreement are the outgrowth of extensive member discussions and review. The agreement provides much-needed certainty for NCPA members by providing stability for the program and protecting against unanticipated cost-shifts. Importantly, the agreement also helps ensure NCPA member flexibility by establishing a "beneficiaries pay" structure for public benefits projects, and providing for increased local discretion related to participation in judicial action initiatives. It will also prevent undue staff time (and opportunity costs) and legal fees expended as a result of disputes that can arise in the absence of agreements that provide a shared understanding of the roles and obligations of both the agency and its members.

Fiscal Impact

This agreement will not affect the current cost allocation for the Legislative and Regulatory Affairs program as approved by the NCPA Commission in December, 2010 (please see attached Schedule 1). The agreement ensures that only those members participating in public benefits projects and judicial action initiatives cover the associated costs.

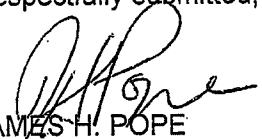
Environmental Analysis

This activity would not result in a direct or reasonably foreseeable indirect change in the physical environment and is therefore not a "project" for purposes of Section 21065 the California Environmental Quality Act. No environmental review is necessary.

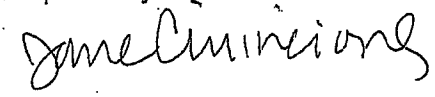
Recommendation

It is the recommendation of the NCPA staff that the Commission approve the attached NCPA Legislative and Regulatory Affairs Program Agreement.

Respectfully submitted,


JAMES H. POPE
General Manager

Prepared by:


JANE CIRRINCIONE
Assistant General Manager,
Legislative & Regulatory Affairs

Attachments (3)

- Resolution 12-24
- Legislative and Regulatory Affairs Program Agreement
- NCPA Commission Approved Allocation Methodology for the Legislative & Regulatory Program

RESOLUTION 12-24

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVAL OF LEGISLATIVE AND REGULATORY AFFAIRS PROGRAM AGREEMENT

(Staff Report #133:12)

WHEREAS, since the inception of NCPA, the legislative and regulatory activities of the agency have been fundamental to our purpose of managing substantial public investment and resources, and protecting the public power business model through the preservation of local control; and

WHEREAS, following extensive NCPA member review and consultation, a Legislative and Regulatory Affairs Program agreement has been developed that recognizes the importance of protecting the agency's assets, resources, and our member systems, and ensures all NCPA members participate in supporting the vital Legislative and Regulatory Affairs functions of this agency; and

WHEREAS, this agreement will provide stability and prevent against unanticipated cost-shifts within the Legislative and Regulatory Affairs Program; and

WHEREAS, this agreement will provide NCPA member flexibility by establishing a "beneficiaries pay" structure for public benefits projects and providing for local discretion over participation in judicial action initiatives; and

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency adopts the Legislative and Regulatory Affairs Program Agreement.

PASSED, ADOPTED and APPROVED this ____ day of _____ 2012, by the following vote on roll call:

| | <u>Vote</u> | <u>Abstained</u> | <u>Absent</u> |
|-----------------|-------------|------------------|---------------|
| Alameda | _____ | _____ | _____ |
| BART | _____ | _____ | _____ |
| Biggs | _____ | _____ | _____ |
| Gridley | _____ | _____ | _____ |
| Healdsburg | _____ | _____ | _____ |
| Lodi | _____ | _____ | _____ |
| Lompoc | _____ | _____ | _____ |
| Palo Alto | _____ | _____ | _____ |
| Port of Oakland | _____ | _____ | _____ |
| Redding | _____ | _____ | _____ |
| Roseville | _____ | _____ | _____ |
| Santa Clara | _____ | _____ | _____ |
| Truckee Donner | _____ | _____ | _____ |
| Ukiah | _____ | _____ | _____ |
| Plumas-Sierra | _____ | _____ | _____ |

GARY W. PLASS
CHAIRMAN

ATTEST:

DENISE DOW
ASSISTANT SECRETARY

NORTHERN CALIFORNIA POWER AGENCY

LEGISLATIVE AND REGULATORY AFFAIRS PROGRAM AGREEMENT

This LEGISLATIVE AND REGULATORY AFFAIRS PROGRAM AGREEMENT ("this Agreement") is made as of July 1, 2012, by and among the Northern California Power Agency, a joint powers agency of the State of California ("NCPA") and its Members. NCPA and the Members are referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS

A. NCPA maintains a Legislative and Regulatory Affairs Program by which NCPA provides its Members with: (1) representation and advocacy in areas of common interest to all, or nearly all Members at the regional, state and federal level, including, but not limited to, representation and advocacy before the California Legislature, U.S. Congress, the CAISO, state and federal environmental and energy agencies, state and federal commissions and other regulatory bodies; (2) support and expertise for Members involved in particular NCPA Projects and Programs; and (3) programmatic support for implementation, reporting, and compliance with various state and federal programs and requirements.

B. The Legislative and Regulatory Affairs Program consists of three Program Areas: (1) the General L&R Program; (2) the Specific L&R Program; and (3) the Member Services Program. The General L&R Program, Specific L&R Program and Member Services Program are together referred to as the "L&R Program."

C. An agreement is necessary to formalize the contractual relationships between NCPA and Members with regard to the role, scope,

governance, and the equitable allocation of costs associated with the L&R Program. Each Member agrees to pay its equitable share of costs associated with the L&R Program in accordance with its L&R Program Cost Allocation.

D. The L&R Program benefits all Members. It is an integral portion of NCPA's core function and is necessary in order to protect the investments NCPA and its Members have made in their public power assets. It is therefore mandatory for all Members of NCPA to become a signatory to this Agreement, except in such limited circumstances where the Commission exempts a Member from this requirement in accordance with Section 6.2.1 of this Agreement.

E. This Agreement includes provisions for the L&R Judicial Action Program, but does not affect or modify the Judicial Action program administered by NCPA's Power Management Division, nor affect the cost allocations for the Power Management Judicial Action Program.

F. Each Member agrees to pay its equitable share of costs associated with the L&R Program, as determined by the L&R Program Cost Allocation, which accounts for the cost allocation principles set forth in this Agreement.

G. The L&R Program shall operate in accordance with the guidance set forth in the Annual L&R Program Strategic Plan and the Annual Budget. All L&R Program functions are overseen by the NCPA Legislative and Regulatory Affairs Committee ("L&R Committee") and the NCPA Commission.

NOW THEREFORE, the Parties agree as follows:

Section 1. Definitions.

1.1 Definitions. Whenever used in this Agreement (including the Recitals hereto), the following terms shall have the following respective meanings:

1.1.1 "Agreement" means this Legislative and Regulatory Affairs Program Agreement, as the same may be amended from

time to time in accordance with the terms and conditions hereof.

- 1.1.2 "All Resources Bill" means the single, combined monthly bill from NCPA to a Member with respect to all NCPA programs and projects.
- 1.1.3 "Annual Budget" means the NCPA budget for the ensuing Fiscal Year adopted by the Commission, as it may be amended from time to time.
- 1.1.4 "Annual L&R Program Strategic Plan" means the strategic plan for the L&R Program adopted by the L&R Committee and the Commission, as it may be amended from time to time.
- 1.1.5 "Associate Member" means an associate member of NCPA.
- 1.1.6 "Base Resource Share" means an individual Member's Base Resource Share from Western.
- 1.1.7 "Bureau" means the U.S. Bureau of Reclamation.
- 1.1.8 "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m., Pacific Time.
- 1.1.9 "CAISO" means the California Independent System Operator Corporation, or any successor entity.
- 1.1.10 "California Refund Proceeding" means filings and proceedings, whether regulatory or judicial, in connection with the California energy crisis of 2000-2001.
- 1.1.11 "CARB" means the California Air Resources Board.
- 1.1.12 "CEC" means the California Energy Commission.
- 1.1.13 "Claims" has the meaning set forth in Section 10.2.

- 1.1.14 "Commission" means the NCPA Commission.
- 1.1.15 "Constitutive Documents" means, with respect to NCPA, the Joint Exercise of Powers Act (Cal. Govt. Code § 6500, *et seq.*), the Joint Powers Agreement, and the NCPA Rules of Procedure, and such resolutions of general applicability and governance as may be adopted by the Commission; and, with respect to each Member, the California Government Code and other statutory provisions applicable to such Member, any applicable agreements, charters, contracts or other documents concerning the formation, operation or decision making of such Member, including, if applicable, its City Charter, and any codes, ordinances, bylaws, and resolutions adopted by such Member's governing body.
- 1.1.16 "CPUC" means the California Public Utilities Commission.
- 1.1.17 "Effective Date" means the later of (i) the date set forth in the preamble of this Agreement; or (ii) the date this Agreement is executed by all Members.
- 1.1.18 "FERC" means the Federal Energy Regulatory Commission.
- 1.1.19 "Fiscal Year" means the NCPA fiscal year; currently the twelve month period beginning July 1 and ending on the next following June 30.
- 1.1.20 "General Manager" means the General Manager of NCPA.
- 1.1.21 "General L&R Program" means the (1) Legislative Representation, (2) Regulatory Representation, (3) Western Representation; and (4) Judicial Action Program areas as set forth in Section 3.

- 1.1.22 "Joint Powers Agreement" means that certain Amended and Restated Northern California Power Agency Joint Powers Agreement, dated as of January 1, 2008, establishing NCPA, as the same may be amended from time to time.
- 1.1.23 "Judicial Action Program" has the meaning set forth in Section 3.2.3.
- 1.1.24 "L&R" means legislative and regulatory affairs.
- 1.1.25 "L&R Committee" means the NCPA Legislative and Regulatory Committee, as established by the NCPA Rules of Procedure.
- 1.1.26 "L&R Program" has the meaning set forth in Recital B.
- 1.1.27 "L&R Program Cost Allocation" means the cost allocation methodology approved by the NCPA Commission on December 2, 2010, as set forth in Schedule 1.00, as amended from time to time.
- 1.1.28 "L&R Program Schedule" means the procedures, protocols and guidelines, appended to and part of this Agreement, which are subject to change or amendment from time to time by the Commission, as set forth in Section 10 of this Agreement.
- 1.1.29 "Legislative Program" has the meaning set forth in Section 3.1.1.
- 1.1.30 "Member" means any Member of NCPA or Associate Member of NCPA.
- 1.1.31 "Member Services Program" has the meaning set forth in Section 5.
- 1.1.32 "NCPA" has the meaning set forth in the preamble hereto.

- 1.1.33 "NCPA Rules of Procedure" means the Rules of Procedure for the Commission of the Northern California Power Agency, sometimes referred to as the NCPA By-laws, as amended from time to time.
- 1.1.34 "NERC" means the North American Electric Reliability Corporation.
- 1.1.35 "Party" or "Parties" has the meaning set forth in the preamble hereto; provided that "third party" or "third parties" are entities that are not a Party to this Agreement.
- 1.1.36 "PG&E" means Pacific Gas and Electric Company.
- 1.1.37 "Pooling Agreement" means that certain Amended and Restated Pooling Agreement dated as of October 29, 2008, as the same may be amended from time to time.
- 1.1.38 "Power Management Cost Allocation Methodology" means the methodology adopted by the Commission from time to time to allocate power management costs. As of the Effective Date, such methodology is based upon a consultant study referred to by the Parties as the "Nexant Study."
- 1.1.39 "Regulatory Program" has the meaning set forth in Section 3.1.2.
- 1.1.40 "Specific L&R Program" means activities or initiatives undertaken relative to a specific NCPA Project, NCPA Pooling Agreement matter, or other NCPA agreement as set forth in Section 4.
- 1.1.41 "Term" has the meaning set forth in Section 12.
- 1.1.42 "Utility Director" means the most senior Member employee with day-to-day authority to direct, manage and control

operation of Member's utility, or if the Member does not have a utility, the most senior Member employee with authority to direct, manage and control acquisition and use of electric power on behalf of that Participant.

1.1.43 "WECC" means the Western Electricity Coordinating Council.

1.1.44 "Western" means the Western Area Power Administration.

1.1.45 "Western Program" has the meaning set forth in Section 3.1.3.

1.2 Rules of Interpretation. As used in this Agreement (including the Recitals hereto), unless in any such case the context requires otherwise: the terms "herein," "hereto," "herewith" and "hereof" are references to this Agreement taken as a whole and not to any particular provision; the term "include," "includes" or "including" shall mean "including, for example and without limitation;" and references to a "Section," "subsection," "clause," or "Exhibit" shall mean a Section, subsection, clause or Exhibit of this Agreement, as the case may be. All references to a given agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made, and reference to a law, regulation or ordinance includes any amendment or modification thereof. A reference to a "person" includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organization or other entity, in each case whether or not having a separate legal personality and includes its successors and permitted assigns. The singular shall

include the plural and the masculine shall include the feminine, and *vice versa*.

Section 2. L&R Program Structure. The L&R Program consists of three (3) Programs: (1) the General L&R Program; (2) the Specific L&R Program; and (3) the Member Services Program. Each Program Area shall operate in accordance with the guidance set forth in the Annual Budget and the Annual L&R Program Strategic Plan. To the extent practicable, and except as otherwise provided for in this Agreement, NCPA shall endeavor to allocate L&R Program costs in an equitable manner, taking into account factors such as cost causation, Member size (including load, population, and number of customers), annual percentage increase in Member allocation, level of Member participation in NCPA Programs and Projects, and other relevant factors. Each Member shall be responsible for paying its fair share of the costs of the L&R Program, as determined by the L&R Program Cost Allocation set forth in Schedule 1.00.

Section 3. General L&R Program. The General L&R Program includes the following four (4) areas: (1) a Legislative Program focused on broad policy issues of general significance to all, or nearly all Members; (2) a Regulatory Program focused on broad policy issues of general significance to all, or nearly all Members; (3) Western Program; and (4) L&R Judicial Action.

3.1 General L&R Program Areas.

3.1.1 Legislative Program. The Legislative Program addresses broad policy issues of general significance. The Legislative Program provides legislative advocacy and lobbying of both the state and federal government. The Legislative Program is divided into three separate budget centers:

3.1.1.1. State legislative. This budget center includes advocacy efforts focused on representing the

needs of public power systems and electricity ratepayers before members of the state Senate and Assembly, the Office of the Governor, and state energy and environmental agencies;

3.1.1.2. *U.S. Congress.* This budget center includes advocacy efforts focused on the potential impacts of national energy and environmental-related legislation on public power systems and representing the needs of public power systems and electricity ratepayers before Members of Congress, the Executive Branch, and federal energy and environmental agencies; and

3.1.1.3. *Advocacy groups.* This budget center includes NCPA's participation in, and associated financial support for, advocacy groups and national associations, which lobby on behalf of and share NCPA's state, federal and regional policy goals.

3.1.2 *Regulatory Program.* The Regulatory Representation Program addresses broad policy issues of general significance. NCPA's regulatory program is responsible for advocacy and litigation or participation in proceedings before state, federal, and regional regulatory agencies, including, but not limited to the CARB, CEC, CPUC, FERC, NERC, WECC and the CAISO.

3.1.3 Western Program. The Western Program is an advocacy program which provides legislative and regulatory advocacy before representatives of Western and the Bureau and works with these agencies and the United States Congress to maximize the value of the Western power resource for Members having Western power allocations. The Western Program does not include activities or initiatives engaged in solely for the benefit of signatories to a Western Assignment Contract with Western, and a concomitant Assignment Administration Program Agreement with NCPA by which certain Members (as assignor) have assigned their Base Resource Share to NCPA (as assignee) to permit NCPA to create a power resource portfolio administered through the Pooling Agreement.

3.1.4 L&R Judicial Action. The L&R Judicial Action Program involves participation in particular litigation and in discrete regulatory or legislative dockets, proceedings or cases pending at CARB, CEC, CPUC, FERC or other regulatory agencies, where such proceedings affect public power. In the Commission's discretion, and only under special and limited circumstances, major policy matters that are sufficiently unique, discrete and identifiable may be identified as part of and fall within the L&R Judicial Action Program, rather than other areas of the L&R Program (and rather than within the Power Management L&R Judicial Action Program).

3.1.4.1. *Judicial Action Programs – Notice and Commission Approval Requirements.* NCPA has an obligation to provide notice to Members and secure Commission approval when NCPA proposes to undertake a L&R Judicial Action Program initiative. NCPA shall provide notice concerning any L&R Judicial Action Program initiative it plans to undertake on the Commission agenda and secure Commission approval before NCPA undertakes that Judicial Action Program initiative; provided, however, that once NCPA has secured NCPA Commission approval of its participation in a Judicial Action Program initiative, it is not necessary for NCPA to provide notice in advance of each individual filing, action, or activity associated with that L&R Judicial Action Program initiative.

3.1.4.2. *Member Participation in L&R Judicial Action Program Initiatives.* Once NCPA has provided Members with notice of its intent to participate in a L&R Judicial Action Program initiative on a NCPA Commission Agenda and secured NCPA Commission approval to participate in the Judicial Action Program initiative, Members must affirmatively opt-out of such initiative by providing written notice to the

General Manager of that Member's intent to opt-out of the Judicial Action Program initiative within thirty (30) days of the NCPA Commission's approval of the Judicial Action Program initiative, otherwise such Member will be considered a part of the L&R Judicial Action Program initiative. The General Manager may extend the thirty (30) day time period for a Member to opt-out of a Judicial Action Program initiative for an additional thirty (30) days, as necessary, upon written request submitted by the Member to the General Manager.

3.1.4.3. *Withdrawal from L&R Judicial Action Program Initiatives.* Once a Member has failed to opt-out of an L&R Judicial Action Program Initiative that involves formal filing of pleadings before any court or regulatory agency, that Member may only withdraw from such Judicial Action Program initiative after providing sixty (60) days written notice to the General Manager. Any such withdrawal from all or part of any L&R Judicial Action Program initiative shall in no way relieve that Member from obligations and costs incurred on behalf of that Member prior to that Member providing notice of its intent to withdraw,

including any and all attorneys fees, consultant or witness fees, or any other costs incurred or contracts entered into prior to that Member's withdrawal.

3.1.4.4. *Joint Defense and Litigation Privileges.*

Notwithstanding any agreement or provision to the contrary, each Member in the L&R Judicial Action Program agrees that it intends a Joint Defense and Joint Litigation privilege to apply to all litigation and regulatory proceedings to which NCPA becomes a party as a consequence, and that such joint defense and joint litigation privilege is in addition to such attorney client or other privileges as may apply as a consequence of the Joint Powers Agreement, or otherwise.

3.1.4.5. *Agreement as Not Affecting Power Management Judicial Action.*

This Agreement provides for judicial action only within the context of the L&R Program. It does not affect such judicial action as may be undertaken by NCPA's Power Management Division, the costs of which shall continue to be allocated by NCPA in accordance with the power management cost allocation methodology, as may be amended by the

Commission or such other methodology as the
Commission may establish.

3.2 Cost Allocation Principles for the General L&R Program. Costs associated with the General L&R Program shall be allocated in accordance with the following principles:

3.2.1 Legislative Program and Regulatory Program. Costs associated with the Legislative Program and Regulatory Program under the General L&R Program shall be allocated to all Members in accordance with the L&R Program Cost Allocation set forth in Schedule 1.00. The Commission may, in its sole discretion, utilize funds collected from Members pursuant to Article IV, Section 3(a) of the Joint Powers Agreement to offset Member costs associated with the General L&R Program.

3.2.2 Western Program. Costs associated with the Western Program shall be allocated based on each Member's Western Base Resource Share relative to other Members with Western allocations.

3.2.3 L&R Judicial Action. Costs associated with the L&R Judicial Action Program shall be borne only by Members that elect to participate (or fail to opt-out of a particular L&R Judicial Action initiative, as applicable) and shall be allocated amongst such Members on a case-by-case basis by the Commission as appropriate; provided however:

3.2.3.1. Rates & Tariffs. The costs associated with activities and initiatives related to CAISO Rates and Tariffs and PG&E Rates and Tariffs are not

governed by this Agreement. Such costs are a part of the Power Management L&R Program and shall be allocated pursuant to the Power Management Cost Allocation Methodology, as adopted or amended by the Commission from time to time; and

3.2.3.2. *Western – Pool Members.* The costs associated with activities and initiatives related to Western undertaken solely for the benefit of signatories to a Western Assignment Contract with Western, and a concomitant Assignment Administration Program Agreement with NPCA by which certain Members (as assignor) have assigned their Base Resource Share to NPCA (as assignee) to permit NPCA to create a power resource portfolio administered through the Pooling Agreement shall be borne exclusively by those signatories to the Pooling Agreement, based on each signatory's relative Western Base Resource Share; and

3.2.3.3. *California Refund Proceeding.* The costs associated with activities and initiatives related to the California Refund Proceeding shall be allocated in accordance with the refund methodology approved by the Commission from time-to-time for that matter.

Section 4. Specific L&R Program. In addition to the General L&R Program, NCPA also undertakes activities and initiatives from time-to-time on behalf of particular subsets of NCPA Members that may or may not be of benefit to all Members.

4.1 **Specific L&R Program Areas.** The Specific L&R Program includes legislative, regulatory and judicial activities and initiatives undertaken solely for the benefit of a specific NCPA Project, signatories to the Pooling Agreement, or a signatory to a separate agreement with NCPA.

4.2 **Cost Allocation Principles for the Specific L&R Program.** Costs associated with the Specific L&R Program shall not be borne by Members in general. Such costs shall be allocated among specific Members in the relevant NCPA Project, Pooling Agreement or other agreement in accordance with the terms of the applicable agreements.

Section 5. Member Services Program. The Member Services Program generally undertakes activities or initiatives on behalf of particular subsets of NCPA Members that may or may not be of benefit to all Members.

5.1 **Member Services Program Areas.** The Members Services Program:

5.1.1 Provides data and information to Members needed to comply with statutory energy and environmental reporting obligations;

5.1.2 Undertakes joint projects to promote the adoption of best utility practices among Members; and

5.1.3 Collaborates with, and provides leadership for, statewide compliance efforts by public power agencies to ensure that credible and consistent data is provided to State agencies in

a manner that will help prevent future legislative intrusions on local control of publicly-owned generation, transmission and distribution of electric energy.

5.2 Cost Allocation Principles for the Member Services Program. Cost associated with the Member Services Program shall be allocated in accordance with the following principles:

5.2.1 Member Services Staff. The costs associated with the provision of services noted in section 5.1 , and the cost (including all allocated overheads) of at least one (1) dedicated NCPA Member Services Program staff person, shall be allocated amongst all Members in accordance with the L&R Program Cost Allocation set forth in Schedule 1.00, as amended from time to time.

5.2.2 Other Member Services Program Costs. Costs associated with other Member Services projects, activities and initiatives shall be allocated based on each Member's involvement in a particular Member Services project, activity or initiative, and where applicable, the terms and conditions of any applicable agreements by and among Members and NCPA for discrete Member Services Program projects, activities or initiatives.

Section 6. Member Commitments.

6.1 Existing Members. The L&R Program benefits all Members. It is an integral portion of NCPA's core function and is necessary in order to protect the investments NCPA and its Members have made in their public power assets. It is therefore mandatory for all Members of NCPA to become a signatory to this Agreement.

- 6.2 New Members. Following the Effective Date of this Agreement, any new Member of NCPA who becomes a signatory to the Joint Powers Agreement must also concurrently become a signatory to this Agreement, except as provided in Section 6.2.1.
- 6.2.1 Exceptions. The Commission may, by a unanimous vote and due to a special, unique or legal circumstance, exempt a Member from the requirement that it become a signatory to this Agreement when it becomes a signatory to the Joint Powers Agreement, and approve a Resolution setting forth the specific terms of that individual Member's participation in and cost allocation under the L&R Program; provided however, that the Commission may concurrently limit the authority to participate in the L&R Program for any Member granted such an exemption, including that Member's voting authority on the L&R Committee as set forth in Section 8.2.
- 6.3 L&R Program Costs. Each Member agrees to and acknowledges its mandatory obligation to pay its L&R Program Cost Allocation invoiced in its All Resources Bill.
- 6.3.1 Participation and Costs. Any Member may elect to represent itself, or not participate in whole or in part in any portion of the General L&R Program, Specific L&R Program or Member Services Program; provided however, that any such decision shall not relieve any Member of its mandatory obligation to pay its L&R Program Cost Allocation.
- 6.3.2 Exceptions to Cost Obligation. The Commission may, by a unanimous vote and due to a special, unique or legal circumstance, adopt a resolution which exempts a Member

from paying all or a portion of the costs associated with the General L&R Program, Specific L&R Program and Member Services Program, and setting forth the terms of that individual Member's cost allocation under the L&R Program; provided however, that such an adjustment to a Member's cost allocation may, in the Commission's discretion, concurrently limit that Member's authority to participate in the L&R Program, including that Member's voting authority on the L&R Committee as set forth in Section 8.2. Exceptions granted pursuant to this Section shall be reflected in that Member's L&R Program Cost Allocation.

Section 7. Strategic Plan and Annual Budget.

- 7.1 Each year, NCPA shall present to the L&R Committee a proposed Annual L&R Program Strategic Plan. The proposed Annual L&R Program Strategic Plan shall outline proposed: (1) initiatives, goals, priorities and objectives for the L&R Program, including identification of those that fall within the General L&R Program, Specific L&R Program and the Member Services Program; and (2) budgets for the L&R Program, including individual budgets for the General L&R Program, Specific L&R Program and the Member Services Program.
- 7.2 Following approval by the L&R Committee, the proposed Annual L&R Program Strategic Plan shall be presented to the Commission for its consideration and adoption as part of NCPA's Annual Budget review process.

- 7.3 The Annual L&R Program Strategic Plan adopted by the Commission shall serve as the basis for the Commission's development of the L&R Program's budget which shall be a part of the Annual Budget.
- 7.4 The Commission shall apply the L&R Program Cost Allocation set forth in Schedule 1.00 to the L&R Program's budget to determine each Member's equitable share of L&R Program costs, except as otherwise provided for in this Agreement.
- 7.5 NCPA shall operate the L&R Program in accordance with the adopted L&R Program Strategic Plan and within the monetary parameters of the Annual Budget adopted by the Commission.

Section 8. L&R Committee. The L&R Committee shall consider and report upon all matters relating to state and federal law referred to it by the NCPA Commission or by the General Manager and shall serve as an advisory committee on L&R matters in accordance with the NCPA Rules of Procedure.

- 8.1 Establishment of the L&R Committee. The L&R Committee exists in accordance with the provisions of the NCPA Rules of Procedure. The L&R Committee shall consist of one or more representatives appointed by each Member, which representatives shall be the Member's designated voting representative on the NCPA Commission, that Member's Utility Director, or a designated Alternate NCPA Commissioner of that Member.

- 8.1.1 *Designation of Alternate Representative.* Each Member may also designate a temporary alternate representative for an L&R Committee meeting, in accordance with the following procedure:

8.1.1.1. A Member must notify the General Manager in writing of the identity of its alternate representative in advance of the L&R Committee meeting at which that alternate representative intends to participate and vote. Such notification must be signed by either the Member's designated voting representative on the NCPA Commission or that Member's Utility Director;

8.1.1.2. In advance of the L&R Committee meeting at which that alternate representative intends to participate and vote, the Member must sign and submit a form to NCPA, using a form to be prepared by NCPA specifically for that purpose, to the General Manager, stating that the alternate representative's vote on L&R Committee matters is binding on that Member, and such form must be signed by the alternate representative and the Member's designated voting representative on the NCPA Commission or that Member's Utility Director.

8.2 Voting. Except as provided in section 8.2.1, each Member shall be entitled to cast one vote. If a Member has designated more than one L&R Committee Representative, then the voting representative shall be first the Member's Commissioner, or in the absence of the Commissioner, the Utility Director, or in the absence of both the

Commissioner and the Utility Director the temporary alternate designated pursuant to Section 8.1.1.

8.2.1 Limitations.

- 8.2.1.1. *Specific L&R Program.* Only Members participating in the relevant project, Pooling Agreement, or other agreement shall be entitled to vote, in accordance with the applicable Project Agreement, Pooling Agreement or other agreement.
- 8.2.1.2. *Member Services Projects, Activities, & Initiatives.* Only Members participating in a particular Member Services Program project, activity or initiative (pursuant to section 5.2.2) shall be entitled to vote on matters related to that project, activity or initiative.
- 8.2.1.3. *Limited Members.* Notwithstanding the foregoing, and except as otherwise provided by the Commission resolution granting an exception, any Member that has been granted an exception pursuant to Section 6.3.2 of this Agreement shall not be entitled to voting representation on the L&R Committee, but may designate one non-voting representative and one or more non-voting alternates. Such Members shall be entitled to receive notices of and to attend all regular and special meetings of the L&R Committee.

8.3 L&R Committee Rules of Procedure. The Commission in its discretion may establish rules of procedure for the L&R Committee.

Section 9. Administration of Agreement. The Commission has sole overall responsibility and authority for the administration of this Agreement. NCPA shall undertake L&R Program activities in accordance with the Annual Budget and Annual L&R Program Strategic Plan adopted by the Commission. Any acts, decisions or approvals taken, made or sought by NCPA under this Agreement shall be taken, made or sought, as applicable, in accordance with NCPA's Constitutive Documents.

Section 10. L&R Program Schedules. L&R Program Schedules may be established for the implementation of this Agreement. L&R Program Schedules can provide detailed descriptions, procedures, protocols and guidelines (including operating and cost recovery procedures) for the operation of the L&R Program. The L&R Program Schedules may be adopted, amended or deleted by the NCPA Commission after receiving the recommendation of the L&R Committee. Upon Commission approval, adoptions, amendments, or deletions of L&R Program Schedules shall be effective immediately without the necessity of approval by the governing board or commission of any Member. NCPA shall upon adoption, amendment or deletion of an L&R Program Schedule ensure that each Member is promptly provided notice of such adoption, amendment or deletion. In the event of a conflict between this Agreement and any L&R Program Schedule, this Agreement shall govern.

Section 11. Effectiveness of Agreement. This Agreement became effective on the Effective Date.

Section 12. Term and Termination. The Term of this Agreement for each Member is concurrent with each Member's membership in NCPA. If a Member withdraws from NCPA, then this Agreement shall terminate as to that Member,

but shall remain in effect for all other Members. Any cost or liability arising prior to withdrawal from membership and remaining undischarged as of the effective date of withdrawal from NCPA shall continue and the withdrawing Member shall be required to satisfy such costs or liabilities as a condition of withdrawal from NCPA.

Section 13. Miscellaneous

- 13.1 Confidentiality. All Parties acknowledge that, from time to time, the information provided to them as a part of the L&R Program will be politically and commercially sensitive and may be confidential or trade secret information. The Parties will keep confidential all confidential or trade secret information made available to them in connection with this Agreement or the L&R Program to the extent possible, consistent with applicable laws, including the California Public Records Act. It shall be the responsibility of the holder of the claim of confidentiality or trade secret to defend at its expense against any request that such information be disclosed. Confidential or trade secret information shall be marked or expressly identified as such.
- 13.2 Indemnification and Hold Harmless. To the maximum extent permitted by law and subject to the provisions of Section 13.4, each Member agrees to indemnify, defend and hold harmless NCPA and its Members, including their respective governing officials, officers, agents, and employees, from and against any and all claims, suits, losses, costs, damages, expenses and liability of any kind or nature, including reasonable attorneys' fees and the costs of litigation, including experts ("Claims"), to the extent caused by any acts, omissions, breach of contract, negligence (active or passive), gross

negligence, recklessness, or willful misconduct of a Member, its governing officials, officers, employees, subcontractors or agents.

13.3 Separate Liabilities. No Member shall be liable under this Agreement for the obligations of any other Member, and each Member shall be solely responsible and liable for performance of its obligations under this Agreement, except as otherwise provided for herein. The obligation of each Member under this Agreement is a separate obligation and not a joint obligation with those of the other Members.

13.4 No Consequential Damages. FOR ANY BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER DAMAGES OR REMEDIES ARE HEREBY WAIVED. IF NO REMEDY OR MEASURE OF DAMAGE IS EXPRESSLY PROVIDED, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE HEREBY WAIVED. IN NO EVENT SHALL NCPA OR ANY MEMBER OR THEIR RESPECTIVE SUCCESSORS, ASSIGNS, REPRESENTATIVES, DIRECTORS, OFFICERS, AGENTS, OR EMPLOYEES BE LIABLE FOR ANY LOST PROFITS, CONSEQUENTIAL, SPECIAL, EXEMPLARY, INDIRECT, PUNITIVE OR INCIDENTAL LOSSES OR DAMAGES, INCLUDING LOSS OF USE, LOSS OF GOODWILL, LOST REVENUES, LOSS OF PROFIT OR LOSS OF CONTRACTS EVEN IF SUCH PARTY HAS BEEN ADVISED OF

THE POSSIBILITY OF SUCH DAMAGES, AND NCPA AND EACH MEMBER EACH HEREBY WAIVES SUCH CLAIMS AND RELEASES EACH OTHER AND EACH OF SUCH PERSONS FROM ANY SUCH LIABILITY.

The Parties acknowledge that California Civil Code section 1542 provides that: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." The Parties waive the provisions of section 1542, or other similar provisions of law, and intend that the waiver and release provided by this section of this Agreement shall be fully enforceable despite its reference to future or unknown claims.

- 13.5 Amendments. Except as provided in Section 8 of this Agreement, this Agreement may be amended only by written instrument executed by all of the Parties with the same formality as this Agreement.
- 13.6 Severability. In the event that any of the terms, covenants or conditions of this Agreement or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction, all other terms, covenants or conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless the court holds that such provisions are not severable from all other provisions of this Agreement.
- 13.7 Governing Law. This Agreement shall be interpreted, governed by, and construed under the laws of the State of California.

- 13.8 Headings. All indices, titles, subject headings, section titles and similar items are provided for the purpose of convenience and are not intended to be inclusive, definitive, or affect the meaning of the contents of this Agreement or the scope thereof.
- 13.9 Notices. Any notice, demand or request required or authorized by this Agreement to be given to any party shall be in writing, and shall either be personally delivered to a Member's Utility Director, or in the case of NCPA to its General Manager, or transmitted to the Member and NCPA at the address shown on the signature pages hereof. The designation of such address may be changed at any time by written notice given to the Secretary of the Commission who shall thereupon give written notice of such change to each Member.
- 13.10 Warranty of Authority. Each Party represents and warrants that it has been duly authorized by all requisite approval and action to execute and deliver this Agreement and that this Agreement is a binding, legal, and valid agreement enforceable in accordance with its terms as to the Member, and as to NCPA. Upon execution of this Agreement, each Member shall deliver to NCPA a resolution of the governing body of such Member evidencing approval of and authority to enter into this Agreement and an opinion of legal counsel that such authority was duly exercised in accordance with such Member's Constitutive Documents.
- 13.11 Counterparts. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument and as if all the signatories to all of the counterparts had signed the same

instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

13.12 Assignment. No Member may assign or otherwise transfer their rights and obligations under this Agreement without the express written consent of NCPA.

IN WITNESS WHEREOF, each Member has executed this Agreement with the approval of its governing body, and NCPA has authorized this Agreement in accordance with the authorization of its Commission.

NORTHERN CALIFORNIA
POWER AGENCY
[Address]
[City, State, Zip]
[Telephone]
[Facsimile]

CITY OF ALAMEDA
[Address]
[City, State, Zip]
[Telephone]
[Facsimile]

By: _____
Title: _____
Date: _____

Approved as to form:

By: _____
Its: General Counsel
Date: _____

By: _____
Title: _____
Date: _____

Approved as to form:

By: _____
Its: City Attorney
Date: _____

SAN FRANCISCO BAY AREA RAPID

TRANSIT

[Address]

[City, State, Zip]

[Telephone]

[Facsimile]

By: _____

Title: _____

Date: _____

Approved as to form:

By: _____

Its: General Counsel

Date: _____

CITY OF GRIDLEY

[Address]

[City, State, Zip]

[Telephone]

[Facsimile]

By: _____

Title: _____

Date: _____

Approved as to form:

By: _____

Its: City Attorney

Date: _____

CITY OF BIGGS

[Address]

[City, State, Zip]

[Telephone]

[Facsimile]

By: _____

Title: _____

Date: _____

Approved as to form:

By: _____

Its: City Attorney

Date: _____

CITY OF HEALDSBURG

[Address]

[City, State, Zip]

[Telephone]

[Facsimile]

By: _____

Title: _____

Date: _____

Approved as to form:

By: _____

Its: City Attorney

Date: _____

CITY OF LODI

[Address]

[City, State, Zip]

[Telephone]

[Facsimile]

By: _____

Title: _____

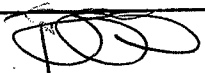
Date: _____

Approved as to form:

By: D. Stephen Schwabauer

Its: City Attorney

Date: _____



CITY OF LOMPOC

[Address]

[City, State, Zip]

[Telephone]

[Facsimile]

By: _____

Title: _____

Date: _____

Approved as to form:

By: _____

Its: City Attorney

Date: _____

CITY OF PALO ALTO

[Address]

[City, State, Zip]

[Telephone]

[Facsimile]

By: _____

Title: _____

Date: _____

Approved as to form:

By: _____

Its: City Attorney

Date: _____

PLUMAS-SIERRA RURAL
ELECTRIC COOPERATIVE

[Address]

[City, State, Zip]

[Telephone]

[Facsimile]

By: _____

Title: _____

Date: _____

Approved as to form:

By: _____

Its: General Counsel

Date: _____

CITY OF OAKLAND, acting by and
through its BOARD OF PORT
COMMISSIONERS
[Address]
[City, State, Zip]
[Telephone]
[Facsimile]

By: _____
Title: _____
Date: _____

Approved as to form:

By: _____
Its: General Counsel _____
Date: _____

CITY OF ROSEVILLE

[Address]
[City, State, Zip]
[Telephone]
[Facsimile]

By: _____
Title: _____
Date: _____

Approved as to form:

By: _____
Its: City Attorney _____
Date: _____

CITY OF REDDING

[Address]
[City, State, Zip]
[Telephone]
[Facsimile]

By: _____
Title: _____
Date: _____

Approved as to form:

By: _____
Its: City Attorney _____
Date: _____

CITY OF SANTA CLARA

[Address]
[City, State, Zip]
[Telephone]
[Facsimile]

By: _____
Title: _____
Date: _____

Approved as to form:

By: _____
Its: City Attorney _____
Date: _____

TRUCKEE DONNER PUBLIC
UTILITY DISTRICT

[Address]

[City, State, Zip]

[Telephone]

[Facsimile]

By: _____

Title: _____

Date: _____

Approved as to form:

By: _____

Its: General Counsel _____

Date: _____

CITY OF UKIAH

[Address]

[City, State, Zip]

[Telephone]

[Facsimile]

By: _____

Title: _____

Date: _____

Approved as to form:

By: _____

Its: City Attorney _____

Date: _____

INDEX OF L&R PROGRAM SCHEDULES

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L&R PROGRAM AGREEMENT
L&R Program Schedule 0-00

INTRODUCTION TO L&R PROGRAM SCHEDULES

Separate L&R Program Schedules will be established for this Agreement and related purposes, as appropriate, pursuant to Section 7 of this Agreement. L&R Program Schedules will provide detailed descriptions, protocols, principles, guidelines and procedures (including operating and cost recovery procedures) for the L&R Program pursuant to this Agreement.

For NCPA Projects and Activities for which another Agreement is executed between NCPA and its Members, the L&R Program Schedule will supplement, and not supersede, such Agreements with respect to the L&R Program.

NCPA L&R Program Schedules shall provide for:

- o L&R Program Cost Allocation; and
- o Other topics as needed in the future.

Additional L&R Program Schedules may be established to provide guidance regarding the L&R Program, or for other aspect of the implementation of this Agreement.

Definitions as set forth in Section 1 of this Agreement shall have the same meaning in the L&R Program Schedules.

NCPA L&R PROGRAM AGREEMENT

L&R Program Schedule 1-00

L&R PROGRAM ALLOCATION

Approved Allocation Methodology for the Legislation and Regulatory Program

Per Commission Action on November 18, 2010

Resolution 10-106

| | Five Year Phase in Plan | | | | |
|---|-------------------------|---------|---------|---------|---------|
| | FY 2012 | FY 2013 | FY 2014 | FY 2015 | FY 2016 |
| Legislative Program (State and Federal) | | | | | |
| 50% of costs (non pass through) allocated by Equal Shares among all participating members | 10.00% | 20.00% | 30.00% | 40.00% | 50.00% |
| 50% of costs (non pass through) allocated by Energy Shares from previous calendar year | 90.00% | 80.00% | 70.00% | 60.00% | 50.00% |
| Regulatory Program (State and Federal) | | | | | |
| 50% of costs (non pass through) allocated by Equal Shares among all participating members | 10.00% | 20.00% | 30.00% | 40.00% | 50.00% |
| 50% of costs (non pass through) allocated by Energy Shares from previous calendar year | 90.00% | 80.00% | 70.00% | 60.00% | 50.00% |
| Member Services | | | | | |
| 50% of costs (non pass through) allocated by Equal Shares among all participating members | 41.86% | 56.39% | 70.93% | 85.46% | 100.00% |
| 50% of costs (non pass through) allocated by Energy Shares from previous calendar year | 58.14% | 43.61% | 29.07% | 14.54% | 0.00% |
| Judicial Action - Green House Gas Reduction Initiative (same as Regulatory Program) | | | | | |
| 50% of costs (non pass through) allocated by Equal Shares among all participating members | 10.00% | 20.00% | 30.00% | 40.00% | 50.00% |
| 50% of costs (non pass through) allocated by Energy Shares from previous calendar year | 90.00% | 80.00% | 70.00% | 60.00% | 50.00% |
| Western | | | | | |
| Costs of program allocated based on adjusted share of Western Base Resource Percentages | | | | | |

Source: NCPA Commission Resolution 10-106.

RESOLUTION NO. 2012-_____

A RESOLUTION OF THE LODI CITY COUNCIL
APPROVING THE NORTHERN CALIFORNIA POWER
AGENCY LEGISLATIVE AND REGULATORY AFFAIRS
PROGRAM AGREEMENT, AND AUTHORIZING THE
CITY MANAGER TO EXECUTE SAID AGREEMENT
WITH ADMINISTRATION BY THE ELECTRIC UTILITY
DIRECTOR

=====

WHEREAS, since the inception of the Northern California Power Agency (NCPA), the legislative and regulatory activities of the agency have been fundamental for the purpose of managing substantial public investment, and protecting the public power business model through preservation of local control; and

WHEREAS, an official agreement is needed to formalize the contractual relationships between NCPA and its members with regard to allocation of costs, and the role of the NCPA Legislative & Regulatory Program.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the NCPA Legislative & Regulatory Affairs Program Agreement, and authorizes the City Manager to execute this agreement on behalf of the City of Lodi, California with administration by the Electric Utility Director.

Dated: April 18, 2012

=====

I hereby certify that Resolution No. 2012-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held April 18, 2012, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

2012-_____



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Authorizing the City Manager to Execute a Consultant Services Agreement with the Northern California Power Agency Regarding crmOrbit, Inc., and Allocate Public Benefit Program Funds (\$27,000)

MEETING DATE: April 18, 2012

PREPARED BY: Electric Utility Director

RECOMMENDED ACTION: Adopt a resolution authorizing the City Manager to Execute a consultant services agreement with the Northern California Power Agency regarding crmOrbit, Inc., and allocate Public Benefit Program funds in the amount of \$27,000.

BACKGROUND INFORMATION: The Northern California Power Agency (NCPA) has executed an agreement with crmOrbit, Inc. to provide energy efficiency services for NCPA members. It will allow residential customers to apply for their energy efficiency utility rebates via the utility's web site and create a database for reporting purposes. This will streamline and expedite rebate processing for both the customer and City staff. In addition, this new database will serve as the platform for Lodi Electric Utility's annual state-required filing of energy savings achieved and rebate funds provided to the City's electric utility customer-owners. The total cost of this service is \$105,000 and covers the ensuing five fiscal years.

Staff is requesting that the City Council authorize the City Manager to execute a consultant services agreement with NCPA, which will administer a contract with crmOrbit, Inc. for this new energy efficiency service and allocate funds for the current fiscal year in the amount of \$27,000.

FISCAL IMPACT: \$107,000 over five years, \$27,000 this fiscal year.

FUNDING: Included in FY2011/12 Budget Account No. 164605.7323.

Jordan Ayers
Deputy City Manager/Internal Services Director

Elizabeth A. Kirkley
Electric Utility Director

PREPARED BY: Rob Lechner, Manager, Customer Service & Programs

EK/RSL/lt

APPROVED: _____
Konradt Bartlam, City Manager



NCPA LEGISLATIVE AND REGULATORY MEMBER SERVICES AGREEMENT FOR THE ENERGY EFFICIENCY DATABASE PROGRAM

This NCPA Legislative and Regulatory Member Services Agreement for the Energy Efficiency Database Program ("Agreement") is made by and between the NORTHERN CALIFORNIA POWER AGENCY ("NCPA"), a joint public powers agency with offices located at 651 Commerce Drive, Roseville, California and certain of its members ("Contracting Members") (together sometimes referred to herein individually as "Party" and collectively as "Parties") as of _____, 2012 (the "Effective Date") in Roseville, California.

Section 1. RECITALS

This Agreement is entered into based on the following facts, among others:

1.1 NCPA is a public agency created by a joint powers agreement established under California law for the purpose of assisting its members in the efficient use of their common powers.

1.2 Contracting Members are engaged in, among other things, transmitting and distributing electric power within their respective cooperative limits. Contracting Members are also members of NCPA. Contracting Members desire that NCPA provide Contracting Members with the L&R Member Services described in this Agreement.

1.3 Article III, section 3 of the "Amended and Restated Northern California Power Agency Joint Powers Agreement" ("the JPA") entitled "Powers and Functions" provides that, "[n]one of the debts, liabilities or obligations of NCPA shall be the debts, liabilities or obligations of any of the members of NCPA unless assumed in a particular case by resolution of the governing body of the member to be charged." Notwithstanding the foregoing, Article V, section 1 of the JPA entitled "General Provisions" provides that "[t]he governing Commission of NCPA is authorized to procure public liability and other insurance as it deems advisable to protect NCPA and each of the parties hereto, charging the cost thereof to the operating costs of NCPA."

1.4 NCPA and each of its Members intend to enter into a Legislative and Regulatory Program Agreement ("the L&RPA"). The L&RPA is intended to provide for certain legislative and regulatory ("L&R") services which will be provided to, and paid for by, all the Members by NCPA as "core services" of the JPA, and to provide that other L&R Member Services may be provided to, and paid for by, less than all the Members by NCPA from time to time upon the request of a subset of Members. This Agreement provides for such non-core L&R Member Services to be provided to the Contracting Members who constitute such a subset, and is intended to be consistent with the planned L&RPA, but the validity of this Agreement is not contingent upon later adoption of the L&RPA.

1.5 Contracting Members desire to secure L&R Member Services under this Agreement in a manner that balances its interests and the interests of other non-participating NCPA Members with the ongoing financial viability and professional responsibilities of NCPA. Accordingly, Contracting Members desire to secure L&R Member Services under this Agreement by accepting a limited insurance based recourse against NCPA, with the option of procuring additional insurance at Contracting Members' sole expense, thereby insuring that NCPA will substantially limit its risk for the provision of such L&R Member Services, and which, in turn, allocates risks back to the Contracting Members in the event NCPA is not adequately insured.

NOW THEREFORE, NCPA and Contracting Members agree as follows:

Section 2. DEFINITIONS

Whenever used in this Agreement with initial capitalization, these terms shall have the following meanings as applicable, whether in the singular or plural:

2.1 "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Pacific time.

2.2 "Contracting Member" or "Contracting Members" means one or all of the NCPA Members which have executed this Agreement.

2.3 "Good Utility Practice" shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result of the lowest reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region and consistently adhered to by the electric utility industry.

2.4 "NCPA Members" or "Members" shall mean the signatories to the JPA or those agencies which have executed an Associate Member Agreement with NCPA.

2.5 "Participation Percentage" shall mean the relative share of costs under this Agreement to be paid by a particular Contracting Member pursuant to Exhibit B relative to the share of costs to be paid by the other Contracting Members.

2.6 "Stranded Costs" shall mean all costs incurred by NCPA in providing Services to Contracting Members under this Agreement that could not reasonably be avoided by NCPA from the date it receives a written Notice of Termination. Such costs may include, but not be limited to, salary and employment costs, rent, utilities, or contracts incurred to provide Services under this Agreement, as well as any termination costs incurred to crmOrbit.

2.7 "Uncontrollable Force" shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm, flood, earthquake, explosion, any curtailment, order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities or any other cause beyond the reasonable control of the Party claiming Uncontrollable Force which could not be avoided through the exercise of Good Utility Practice.

Section 3. L&R MEMBER SERVICES TO BE PROVIDED; AUTHORIZED REPRESENTATIVES; STANDARD OF PERFORMANCE

3.1 This Agreement is entered into by the Parties in order for NCPA to provide L&R Member Services, consisting of on-demand computing to the marketplace (also known as Software as Service or SaaS software) energy efficiency database services to each of the Contracting Members. NCPA shall provide such L&R Member Services, along with appropriate software licensing and maintenance, through a contract between NCPA and a third party provider, crmOrbit, Inc. as further described in Exhibit A hereto ("L&R Member Services").

It is the intent of this Agreement that Contracting Members each authorize and direct NCPA to enter into such third party agreement. Each Contracting Member agrees to pay to NCPA its Participation Percentage share of the costs NCPA incurs in so doing, including all administrative costs incurred by NCPA including its staff time and attorneys' fees, and agrees to conduct itself consistent with the obligations undertaken by NCPA in such crmOrbit agreement.

3.2 The following are the Authorized Representatives of the parties for contract administration purposes under this Agreement:

Northern California Power Agency:
Scott Tomashefsky
Regulatory Affairs Manager
Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678
(916) 781-4291 / 782-2191 FAX
mailto: scott.tomashefsky@ncpa.com

NCPA's Authorized Representative is sometimes referred to as the NCPA Project Manager in this Agreement.

Alameda:
Girish Balachandran
General Manager
Alameda Municipal Power
2000 Grand Street
PO Box H

Alameda, CA 94501
(510) 748-3901
Girish@alamedamp.com

Biggs:
Pete Carr
City Administrator
465 C Street
Biggs, CA 95917
(530) 868-5493
Bigg2@biggs-ca.gov

Healdsburg:
Terry Crowley
Electric Utility Director
401 Grove Street
Healdsburg, CA 95448
(707) 431-3340
tcrowley@ci.healdsburg.ca.us

Lodi:
Elizabeth Kirkley
Utility Director
1331 South Ham Lane
Lodi, CA 95242
(209) 333-6828
ltremble@lodielectric.com

Lompoc:
Ron Stassi
Utility Director
100 Civic Center Plaza
Lompoc, CA 93436
(805) 875-8299
r_stassi@ci.lompoc.ca.us

Plumas-Sierra:
Robert Marshall
General Manager
73233 State Highway 70
Portola, CA 96122
(530) 832-4261
shenson@psrec.coop

Truckee Donner:
Stephen Hollabaugh
General Manager
11570 Donner Pass Road
Truckee, CA 96161
(530) 587-3896
stephenhollabaugh@tdpud.org

No Authorized Representative is authorized to amend any provision of this Agreement except in accordance with Section 12.16. Any Party may amend its Authorized Representative or contact information by providing written notice of the changes to each other Party.

3.3 Standard of Performance. NCPA will perform and or oversee, as applicable, the L&R Member Services using that level of skill and attention reasonably required to complete the L&R Member Services in a competent and timely manner. Contracting Members shall, however, have direct responsibility for interfacing with crmOrbit as provided in Exhibit A. Contracting Members will perform such tasks as necessary to implement the energy efficiency programs with that level of skill and attention reasonably required to complete and operate them in a competent and timely manner.

3.4 Assignment of Personnel. NCPA shall assign only competent personnel to perform L&R Member Services pursuant to this Agreement. Contracting Members approve the assignment of crmOrbit as the third party provider of services.

Section 4. TERM AND TERMINATION

4.1 Authorization to Perform Services. NCPA is not authorized to perform any initial L&R Member Services, or incur any costs whatsoever, under the terms of this Agreement until its receipt of a written resolution and/or other appropriate/applicable authorization from each of the Contracting Members' governing bodies confirming Contracting Members' authority to enter into this Agreement and confirming that the Contracting Members have allocated funds for and approved contract payments to NCPA under this Agreement.

4.2 Term. The term of this Agreement shall begin on the Effective Date and shall end on the date that the crmOrbit consultant services agreement terminates.

4.3 Early Termination and Stranded Costs.

4.3.1 This Agreement may be terminated by NCPA as to all Contracting Members upon ninety (90) days written notice ("Notice of Termination") to Contracting Members.

4.3.2 This Agreement may be terminated by all Contracting Members, upon ninety (90) days written notice to NCPA ("Notice of Termination"). To be effective, the Notice of Termination must be executed by each Contracting Member.

Provided, however, that if so terminated, Contracting Members shall each pay NCPA their Participation Percentage share of all fees and costs required under this Agreement through the effective date of the Notice of Termination plus all Stranded Costs, if any. Upon payment of the above amounts, no Party shall have any further obligations under this Agreement except as otherwise set forth in Section 5.7 regarding the survival of defense and indemnity obligations.

4.3.3 This Agreement may be terminated by any given Contracting Member, upon ninety (90) days written notice ("Notice of Termination") to all other Parties.

Provided, however that the terminating Contracting Member shall pay NCPA its Participation Percentage share of the fees and costs required under this Agreement through the effective date of the Notice of Termination plus all Stranded Costs, if any. Upon payment of the above amounts, the terminating Contracting Member shall have no any further obligations under this Agreement except as otherwise set forth in Section 5.7 regarding the survival of defense and indemnity obligations. The participation percentages of all remaining non-terminating Contracting Members shall be proportionately adjusted to account for the withdrawal of the terminating Contracting Member(s).

Section 5. INDEMNITY AND INSURANCE

5.1 Limitation of NCPA's Liability.

5.1.1 Except as provided in this section 5.1, NCPA shall not at any time be liable for any injury or damage occurring to a Contracting Member or any other person (including crmOrbit) or property from any cause whatsoever arising out of this Agreement.

5.1.2 The provisions of section 5.1.1 shall not apply where the injury or damage occurring to a Contracting Member is caused by the active negligence of NCPA or of any employee, agent or contractor of NCPA (including crmOrbit), and provided that any liability under this subsection is limited to the extent of the actual coverage and coverage limits of the NCPA insurance policies described in this Section 5.

5.1.3 Contracting Members Liable for NCPA's Deductibles and or Self-Insured Retentions. Notwithstanding Section 5.1.2 above, the Contracting Members agree to reimburse NCPA, in a timely manner, for all deductibles and/or self-insured retentions payable for any claim, liability or damage arising out of this Agreement.

5.2 Indemnification of NCPA. Except as specified in Section 5.1.2 above, each Contracting Member shall, at its sole cost and expense, indemnify and hold harmless NCPA and all associated, affiliated, allied, member and subsidiary entities of NCPA, now existing or hereinafter created, and their respective officers, boards, commissions, employees, agents, attorneys, and contractors (hereinafter referred to as "Indemnitees"), from and against any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees arising out of this Agreement, including any claims by crmOrbit.

5.3 Defense of Indemnitees. In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, each Contracting Member shall, upon reasonable prior written notice from any of the Indemnitees, at that Contracting Member's sole cost and expense, resist and defend the same with legal counsel mutually selected by Indemnitee and the Contracting Member, unless mutual selection of counsel is expressly prohibited by an applicable insurance policy; provided however, that neither Indemnitee nor that Contracting Member shall admit liability in any such matter or on behalf of the other without express written consent, which consent shall not be unreasonably withheld or delayed, nor enter into any compromise or settlement of any claim for which Indemnitees are indemnified hereunder without prior express written consent. A Contracting Member's duty to defend shall begin upon receipt of a written notice identifying with specificity the allegations that give rise to this duty to defend.

Any Contracting Member required to defend and indemnify pursuant to this section may, in those circumstances in which it is not wholly at fault, seek equitable contribution from each of the other Contracting Members.

5.4 Notice. The Parties shall give each other prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section 5.

5.5 Insurance. During the term of the Agreement and prior to beginning any work under this Agreement, NCPA shall maintain, or cause to be maintained, in full force and effect, and at its sole cost and expense, the types and limits of liability insurance as are annually approved by the governing Commission of NCPA. The types and limits of liability insurance that are applicable to this Agreement are evidenced in policy summaries, which are attached hereto as Exhibit C. NCPA warrants and represents that the types of liability insurance and coverage limits shown in Exhibit C are in full force and effect and shall remain so during the term of this Agreement unless NCPA gives prior written notification (of not less than thirty (30) days) of modification, cancellation or rescission of such coverage.

5.6 Contracting Members' Acknowledgment of Option to Secure Additional Insurance. The Contracting Members acknowledge that there are limitations on NCPA's liability to the Contracting Members under this Section 5 and that each individual Contracting Member may need

to purchase additional insurance of its own to cover the additional risks and the potential additional liabilities it is assuming under this Agreement. Contracting Members each agree that it will cause, with respect to any additional insurance it obtains or which is otherwise available to the Contracting Member, its insurers to issue an endorsement providing a waiver of subrogation rights as to Indemnitees.

5.7 Survival of Obligations. The limitation of liability, defense and indemnity obligations of Section 5 shall survive the termination of this Agreement.

Section 6. COMPENSATION, CHARGES & RESERVES

6.1 In consideration of the L&R Member Services received, each Contracting Member hereby agrees to pay NCPA their Participation Percentage of costs incurred by NCPA.

NCPA and Contracting Members acknowledge and agree that compensation paid by Contracting Members to NCPA under this Agreement is based upon NCPA's estimated costs of providing the L&R Member Services required hereunder, including salaries and benefits of employees and subcontractors of NCPA, if any. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which NCPA and its employees, agents, and subcontractors may be eligible. Contracting Members therefore have no responsibility for such contributions beyond compensation required under this Agreement.

Section 7. BILLING AND PAYMENT

7.1 Invoices. NCPA shall submit invoices to each Contracting Member during the term of this Agreement, based on the respective Participation Percentage of each for L&R Member Services performed and reimbursable costs incurred prior to the invoice date. Such invoices may, in NCPA's discretion, be combined with NCPA's monthly All Resources Bill sent to all NCPA Members.

7.2 Payment. Contracting Member shall make payments, based on invoices received in accordance with the schedule in Exhibit B, for L&R Member Services satisfactorily performed, and for authorized reimbursable costs incurred. Contracting Member shall have thirty (30) days from the date of the invoice to pay NCPA, or such other time as is specified in an All Resources Bill if the invoices for L&R Services is combined with the All Resources Bill.

Payments shall be remitted directly to:

Northern California Power Agency
651 Commerce Drive
Roseville, California 95678
Attn: Accounts Receivable

Except for an "Uncontrollable Force" as described in Section 9 hereof, any amount due and payable but not paid by a Contracting Member within thirty (30) days following the date of the invoice shall bear interest at the per annum prime rate (or reference rate) of the Bank of America NT & SA, then in effect, plus two (2%) percent per annum computed on a daily basis until paid. NCPA will mail all invoices within twenty-four (24) hours of the invoice date thereon.

The postmark date on the envelope containing payment by check shall be used to determine timeliness of payment, except that payments received later than seven (7) days after the due date shall be declared late without regard to postmark date. An invoice coming due on a day which is not a Business Day shall be due on the next following Business Day.

7.3 Billing Dispute. If all or any portion of a bill is disputed by a Contracting Member, the entire amount of the bill shall be paid when due, and NCPA's Authorized Representative shall be concurrently provided written notice of the disputed amount and the basis for the dispute. NCPA shall reimburse any amount determined to have been incorrectly billed, within ten (10) days after such determination.

7.4 Total Payment. Contracting Members shall pay for the L&R Member Services to be rendered by NCPA pursuant to this Agreement. A Contracting Member shall not pay any additional sum for any expense or cost whatsoever incurred by NCPA in rendering L&R Member Services pursuant to this Agreement unless the Agreement has been modified by a properly executed change order or amendment in accordance with this Agreement.

Contracting Members shall make no payment for any extra, further, or additional service pursuant to this Agreement unless the Agreement has been modified by a properly executed change order or amendment in accordance with this Agreement.

In no event shall NCPA submit any invoice for an amount in excess of the maximum amount of compensation provided above (if any) either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment in accordance with this Agreement.

7.5 Hourly Fees. The L&R Services require that NCPA staff perform various tasks as specified in Exhibit A. NCPA may charge Contracting Members for such time at hourly rates which reimburse NCPA for its costs, including all benefits, for such employees as are used, in a manner consistent with the L&RPA (if the L&RPA is in force). NCPA shall not charge any overhead beyond such hourly rates.

7.6 Reimbursable Expenses. Expenses not specified in the Exhibits as being the responsibility of the Contracting Members are not chargeable to Contracting Members.

7.7 Payment of Taxes. NCPA is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

7.8 Payment upon Termination. In the event that one or more Contracting Members or NCPA terminates this Agreement pursuant to Section 4, the terminating Contracting Member or Members shall compensate the NCPA for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination, in addition to Stranded Costs applicable to that terminating Contracting Member and any early termination costs imposed by crmOrbit as provided in Section 4. NCPA shall maintain adequate logs and timesheets in order to verify costs incurred to that date.

7.9 Authorization to Perform L&R Member Services. NCPA is not authorized to perform any L&R Member Services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from each of the Contracting Members' Authorized Representatives following receipt of the required approvals under the terms of this Agreement.

Section 8. STATUS OF NCPA; FACILITIES AND EQUIPMENT; CONTRIBUTIONS

8.1 Independent Contractor. At all times during the term of this Agreement, NCPA shall be an independent contractor and shall not be an employee of Contracting Members. Contracting Members shall have the right to control NCPA only insofar as the results of NCPA's L&R Member Services rendered pursuant to this Agreement and assignment of personnel pursuant to Section 3.4; however, otherwise Contracting Members shall not have the right to control the means by which NCPA accomplishes L&R Member Services rendered pursuant to this Agreement.

Notwithstanding any other agency, state, local or federal policy, rule, regulation, law, or ordinance to the contrary, NCPA and any of its employees, agents, and subcontractors providing L&R Member Services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by any Contracting Member, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of any Contracting Member and entitlement to any contribution to be paid by any Contracting Member for employer contributions and/or employee contributions for PERS benefits.

8.2 Facilities and Equipment. There are no NCPA facilities and equipment necessary to perform the L&R Member Services required by this Agreement or provided. All facilities and equipment will be provided by crmOrbit.

8.3 NCPA Contribution to Costs. During the term of this Agreement, NCPA agrees that it will, from its general L&R Member Services Program budget, and subject to annual appropriation in the NCPA Annual Budget by the NCPA Commission, contribute thirteen-thousand one hundred forty-five dollars and twenty-seven cents (\$13,145.27) during fiscal year 2011-2012, and thirteen-thousand one hundred forty-five dollars and twenty-seven cents (\$13,145.27) in each of the next five (5) fiscal years (for a total of seventy-eight thousand eight hundred seventy-one dollars and sixty-three cents (\$78,871.63) towards the costs of the L&R Member Services provided for by this Agreement. The Parties agree that the NCPA contribution will be allocated by NCPA solely to, and

paid to NCPA by, the Contracting Members and not by other NCPA Members.

Section 9. UNCONTROLLABLE FORCES

9.1 Obligations of the Parties, other than those to pay money when due, shall be excused for so long as and to the extent that failure to perform such obligations is due to an Uncontrollable Force; provided, however, that if a Party is unable to perform due to an Uncontrollable Force, such Party shall exercise due diligence to remove such inability with reasonable dispatch. Nothing contained in this Agreement shall be construed as requiring a Party to settle any strike, lockout, or labor dispute in which it may be involved, or to accept any permit, certificate, contract, or any other service agreement or authorization necessary for the performance of this Agreement which contains terms and conditions which a Party determines in its good faith judgment are unduly burdensome or otherwise unacceptable.

9.2 Each Party shall notify the others promptly, by telephone to the other Parties' operating personnel and Authorized Representatives identified in Section 3.2, upon becoming aware of any Uncontrollable Force which may adversely affect the performance under this Agreement. A Party shall additionally provide written notice in accordance with Section 12.8 to the other Parties within twenty-four (24) hours after becoming aware of an Uncontrollable Force. Each Party shall notify the others promptly, when an Uncontrollable Force has been remedied or no longer exists.

Section 10. LEGAL REQUIREMENTS

10.1 Governing Law. The laws of the State of California shall govern this Agreement, without regard for the choice of law doctrine.

10.2 Compliance with Applicable Laws. NCPA shall comply with all laws applicable to the performance of the L&R Member Services hereunder.

10.3 Other Governmental Regulations. To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, NCPA and any subcontractors shall comply with all applicable rules and regulations to which a Contracting Member is bound by the terms of such fiscal assistance program.

10.4 Licenses and Permits. NCPA represents and warrants to Contracting Members that NCPA and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that is legally required to practice their respective professions. NCPA represents and warrants to Contracting Members that NCPA and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions.

10.5 Nondiscrimination and Equal Opportunity. NCPA shall not discriminate, on the

basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by NCPA under this Agreement. NCPA shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of NCPA thereby.

NCPA shall include the provisions of this Subsection in its subcontract with crmOrbit approved by this Agreement, and in any other subcontract it may enter into.

Section 11. KEEPING AND STATUS OF RECORDS.

11.1 Records Created as Part of NCPA's Performance. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that NCPA prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the specific Contracting Member for whom it was prepared (or the joint property of the Contracting Members if prepared for all of them). NCPA hereby agrees to deliver those documents to the respective Contracting Members upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the Contracting Members and are not necessarily suitable for any future or other use or for use by third parties.

Contracting Members and NCPA agree that, until final approval by the Contracting Members, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of the Contracting Members (or the specific Contracting Member for whom prepared) and NCPA, except as may otherwise be required by applicable law.

11.2 NCPA's Books and Records. NCPA shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for L&R Member Services or expenditures and disbursements charged to a Contracting Member under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to NCPA to this Agreement.

11.3 Inspection and Audit of Records. Any records or documents that Section 12.2 of this Agreement requires NCPA to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of any Contracting Member. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars (\$10,000.00), this Agreement shall be subject to the examination and audit of the State Auditor, at the request of any Contracting Member or as part of any audit of the Contracting Member, for a period of three (3) years after final

payment under the Agreement.

11.4 Confidential Information and Disclosure. During the term of this Agreement, any Party ("Disclosing Party") may disclose confidential, proprietary or trade secret information (the "Information"), to another Party ("Receiving Party"). All such Information made available in a tangible medium of expression (such as, without limitation, on paper or by means of magnetic tapes, magnetic disks or other computer media) shall be marked in a prominent location to indicate that it is the confidential, proprietary and trade secret information of Disclosing Party at the time of disclosure to Receiving Party. Receiving Party shall hold Disclosing Party's Information in confidence and shall take all reasonable steps to prevent any unauthorized possession, use, copying, transfer or disclosure of such Information. Receiving Party shall not attempt to reverse engineer or in any manner create any product or information which is similar in appearance to or based on the Information provided by Disclosing Party. Receiving Party shall not disclose Disclosing Party's Information to any person other than Receiving Party's employees, agents, contractors and subcontractors who have a need to know in connection with this Agreement.

Receiving Party's confidentiality obligations hereunder shall not apply to any portion of Disclosing Party's Information which:

- (a) Has become a matter of public knowledge other than through an act or omission of Receiving Party;
- (b) Has been made known to Receiving Party by a third party in accordance with such third party's legal rights without any restriction on disclosure;
- (c) Was in the possession of Receiving Party prior to the disclosure of such Information by Disclosing Party and was not acquired directly or indirectly from the other party or any person or entity in a relationship of trust and confidence with the other party with respect to such Information;
- (d) Receiving Party is required by law to disclose; or
- (e) Has been independently developed by Receiving Party from information not defined as "Information" in this Agreement, as evidenced by Receiving Party's written records.

Receiving Party shall return or destroy Disclosing Party's Information (including all copies thereof) to Disclosing Party promptly upon the earliest of any termination of this Agreement or the Disclosing Party's written request. Notwithstanding the foregoing, Receiving Party may retain one copy of such Information solely for archival purposes, subject to the confidentiality provisions of this Agreement. The Parties understand that each Party is a public entity and is subject to the laws (including the California Public Records Act) that may compel one Party to disclose information about the other's business.

Section 12. MISCELLANEOUS PROVISIONS

12.1 Attorneys' Fees. If a Party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that Party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

12.2 Venue. In the event that any Party brings any action against another arising under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer, or in the United States District Court for the Eastern District of California.

12.3 Severability. If any provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid, void or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable by federal or state statute or regulation, but the remaining portions of the Agreement can be enforced without failure of material consideration to any Party, then the remaining provisions shall continue in full force and effect. To that end, this Agreement is declared to be severable. Provided, however, that in the event any provision is declared to be non-severable and invalid, void or unenforceable, any Party may terminate this Agreement upon ten (10) days written notice given within five (5) days of receipt of notice of final entry of judgment.

12.4 No Implied Waiver of Breach. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

12.5 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.

12.6 Use of Recycled Products. NCPA shall endeavor to prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

12.7 Conflict of Interest. NCPA shall not employ any Contracting Member official or employee in the work performed pursuant to this Agreement. No officer or employee of a Contracting Member shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

12.8 Notices. Unless this Agreement requires otherwise, any notice, demand or request provided for in this Agreement, or served, given or made shall become effective when delivered in person, or sent by registered or certified first class mail, to the persons specified below:

Northern California Power Agency:
Jane Cirrincione

Assistant General Manager of Legislative & Regulatory Affairs
Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678

Alameda:
Meredith Owens
Alameda Municipal Power
2000 Grand Street
PO Box H
Alameda, CA 94501
mowens@alamedamp.com

Biggs:
Marlee Mattos
465 C Street
Biggs, CA 95917
(530) 868-5493
biggsar@biggs-ca.gov

Healdsburg:
Terry Crowley
Electric Utility Director
401 Grove Street
Healdsburg, CA 95448
(707) 431-3340
tcrowley@ci.healdsburg.ca.us

Lodi:
Rob Lechner
1331 South Ham Lane
Lodi, CA 95242
(209) 333-6828
rlechner@lodielectric.com

Lompoc:
Mary Kammer
100 Civic Center Plaza
Lompoc, CA 93436
(805) 875-8299
M_KAMMER@ci.lompoc.ca.us

Plumas-Sierra:
Corby Gardner
73233 State Highway 70
Portola, CA 96122
(530) 832-4261
cgardner@psrec.coop

Truckee Donner:
Steven Poncelet
11570 Donner Pass Road
Truckee, CA 96161
(530) 587-3896
StevenPoncelet@tdpud.org

Whenever it is required, permitted, or desired in this Agreement that written notice or demand be given by any Party to any other Party, such notice or demand may be either personally served or sent by United States Mail, or facsimile. Notice shall be deemed to have been given when personally served, when deposited in the United States Mail, certified or registered with United States first class postage prepaid and properly addressed, or when transmitted by facsimile or electronic mail. Provided however, that notices delivered by facsimile or electronic mail shall only be effective if delivered during regular business hours on a Business Day, or else shall be deemed delivered on the next Business Day.

Any Party may amend its address for notice by providing written notice of the revised address to all other Parties.

12.9 Integration; Incorporation. This Agreement, including all the Exhibits attached hereto, represents the entire and integrated agreement between Contracting Member and NCPA relating to the subject matter of this Agreement, and supersedes all prior negotiations, representations, or agreements, either written or oral.

12.10 Dispute Resolution. If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Contracting Members and NCPA agree to resolve the dispute in accordance with the following:

12.10.1 Each Party shall designate a senior management or executive level representative to negotiate any dispute;

12.10.2 The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.

12.10.3 If the issue remains unresolved after one hundred and twenty (120) days of good faith negotiations, despite having used their best efforts to do so, either Party may pursue whatever other remedies may be available to it.

12.10.4 This informal resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code § 900, *et seq.*

12.11 Other Agreements. This Agreement is not intended to modify or change any other agreement between any of the Parties, individually or collectively.

12.12 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

12.13 Obligations Several—Step Up Obligations; No Joint Venture.

12.13.1 The duties, obligations and liabilities of the Contracting Members are intended, in the first instance, to be several and not joint or collective. Each Contracting Member shall be individually and severally liable for its own obligations under this Agreement.

Notwithstanding the foregoing, and to protect the Members of NCPA who are not Parties to this Agreement from any exposure to costs or liability as a consequence of this Agreement, to the extent that any Contracting Member defaults in its obligations to pay its Participation Percentage of the costs of providing the L&R Member Services or other obligations under this Agreement, then the costs for each non-defaulting Contracting Member shall be automatically increased for the remaining term of this Agreement on a pro-rata basis with those of the other non-defaulting Contracting Members sufficient to satisfy such obligations of the Defaulting Contracting Member, consistent with each Participant's Participation Percentage.

12.13.2 Nothing contained in this Agreement shall be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability on or with regard to the Parties.

12.14 Effect of Section Headings. Section headings and subheadings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretation of text.

12.15 Authority of Signatories. The signatories hereby represent that they have been appropriately authorized to execute this Agreement on behalf of the Party for whom they sign.

12.16 Amendments. It is understood and agreed by the Parties that any NCPA Commission approved update to the then current NCPA Annual Budget rates and charges related to L&R Member Services to be performed under this Agreement is deemed an approved amendment to this Agreement. Except for the preceding, or for either designation of Authorized Representatives pursuant to Section 3.2 or persons to receive notice pursuant to section 12.8, the Parties may amend this Agreement only by a writing signed by all the Parties following each Party's receipt of written resolution/authorization from their governing bodies, which resolutions/authorizations shall be condition precedents to any amendments of this Agreement and shall be attached as Exhibits to this Agreement.

12.17 Exhibits. This Agreement includes the following exhibits which are incorporated in this Agreement by reference:

- A. Scope of Services A-1 crmOrbit consultant services agreement including licensing Master Agreement and Terms of Use
- B. Participation Percentages for Contracting Members
- C. NCPA Summaries of Current Liability Insurance

In the event of any conflict between the provisions of this Agreement and those of any exhibit to this Agreement, the terms of this Agreement shall govern.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Northern California Power Agency

By: _____
JAMES H. POPE, General Manager

Attest:

Assistant Secretary of the Commission

Approved as to Form:

General Counsel

CONTRACTING MEMBERS:

CITY OF ALAMEDA

By: _____
Its: _____

Approved as to form:

City Attorney

CITY OF BIGGS

By: _____
Its: _____

Approved as to form:

City Attorney

CITY OF HEALDSBURG

By: _____
Its: _____

Approved as to form:

City Attorney

CITY OF LODI

By: Konradt Bartlam
Its: City Manager

Approved as to form:

City Attorney 

ATTEST:

By: Randi Johl
Its: City Clerk

CITY OF LOMPOC

By: _____
Its: _____

Approved as to form:

City Attorney

PLUMAS-SIERRA RURAL ELECTRIC
COOPERATIVE

By: _____
Its: _____

Approved as to form:

General Counsel

TRUCKEE DONNER PUBLIC UTILITY
DISTRICT

By: _____
Its: _____

Approved as to form:

General Counsel

EXHIBIT A
Scope of L&R Member Services

NCPA shall provide the following L&R Member Services on behalf of Contracting Members:

1. NCPA will enter into a consultant services agreement ("CSA") which includes a licensing and maintenance agreement ("Master Agreement") with third party provider crmOrbit ("Contractor") on behalf of Contracting Member in substantially the form attached to the Agreement as Exhibit A-1. . Contracting Members, by approving the Agreement, approve the CSA and Master Agreement and direct NCPA to enter into them. Contracting Members agree to comply with the terms of such CSA. Costs incurred by NCPA as a consequence of entering into the CSA will be paid to NCPA by Contracting Members in proportion to their Participation Percentages as shown in Exhibit B.

In the event of any conflict or differences in scope of work between the provisions of this Exhibit A and those of Exhibits A-1 which are a part of this Exhibit A, the provisions of Exhibit A-1 (as approved by crmOrbit) shall govern.

2. In general, included in the CSA (and the Master Agreement which is a part of it) are:

During initial implementation, Contractor will configure up to twenty (20) energy efficiency incentive programs, some of which will be shared by the Contracting Members as specified below, and configure up to five (5) different business/workflow processes to be shared by the Contracting Members.

Of the initial set of twenty (20) energy efficiency incentive programs, six (6) will be template (generic) programs to be shared by the Contracting Members and the remaining fourteen (14) will be utility-specific programs with two (2) for each of the seven (7) Contracting Members (City of Alameda, City of Biggs, City of Healdsburg, City of Lodi, City of Lompoc, Plumas-Sierra REC, and Truckee Donner PUD).

Contractor will train Contracting Member Authorized Representatives to configure additional programs and create templates for program types that can be accessed by all authorized users to allow for rapid deployment of new programs with similar workflows.

Contractor will license all programs and processes to NCPA. Each Contracting Member's Authorized Representative shall be a "User" under the terms of the Master Agreement entitled to utilize the programs provided. In the event a Contracting Member desires a different or additional persons to be a User, that Contracting Member shall be responsible for any additional costs in doing so imposed by Contractor.

3. The following provides a general list of deliverables to be provided under the CSA and the ongoing license and maintenance support. NCPA is authorized to determine in its reasonable discretion and on behalf of all the Contracting Members which reports, dashboards, programs or other deliverables will be provided by crmOrbit, provided that NCPA shall consult with the Contracting Members in making such determinations:

Deliverable 1: Develop Project Plan

Contractor shall conduct an initial planning meeting with the NCPA Project Manager and representatives of the Contracting Members. During this session, Contractor will fill in a communications plan identifying key stakeholders, concerns, and communications approach. Contractor shall provide an updated midlevel project plan based upon the example provided in the RFP response document. The project plan shall incorporate key payment milestones and deliverable dates for each of the remaining thirteen (13) deliverables.

Deliverable 1 due date: This deliverable will be submitted for approval by NCPA not later than four (4) weeks after the Effective Date.

Deliverable 2: Develop Energy Efficiency Measures

Contractor will work with NCPA Project Manager and Contracting Member representatives to develop a variety of prescriptive energy efficiency measures, which permit the measurement or calculation of the amount of energy being saved. NCPA shall prepare measures and deemed savings/incentive parameters in a spreadsheet template provided by Contractor.

If requested, Contractor will also configure up to five (5) formula-based prescriptive measure types, in which users provide additional choices/inputs to generate calculated savings, and will train NCPA's Project Manager to set up additional such measures as needed by NCPA or the Contracting Members in the future. Contractor will also set up any additional or further such measures as may be requested on a time and materials basis.

Deliverable 3: Set Up General Program Parameters

Contractor shall work with NCPA Project Manager and Contracting Member Authorized Representatives to set up general program parameters for the initial Contracting Member energy efficiency incentive programs that will be deployed.

Deliverable 4: Develop Program & Measure Requirements

Contractor shall work with NCPA Project Manager and Contracting Member Authorized Representatives to enter program-level and measure-level requirements and develop survey questions to support the energy efficiency incentive programs of the Contracting Members.

Deliverable 5: Create Reports and Dashboards

Contractor will work with NCPA Project Manager and Contracting Member Authorized Representatives to create up to ten (10) reports and ten (10) dashboards for the Contracting Members' energy efficiency incentive programs. Contractor will create five (5) initial reports and five (5) initial dashboards, to be shared by the Contracting Members. Following completion of the initial reports and dashboards, Contractor will provide on-line training to Contracting Members' Authorized Representatives and to NCPA staff on how to create additional reports and dashboards. Upon completion of the on-line training, NCPA shall work with Contractor to implement five (5) additional reports and five additional dashboards to be shared by the Contracting Members.

Deliverable 6: Create Communication Templates

Contractor will work with NCPA Project Manager and Contracting Member Authorized Representatives to create up to four (4) e-mail or mail-merge communication templates in Microsoft Word to be shared by the Contracting Members. These may be used, for example, to create customer commitment letters, application acceptance/decline letters and missing items letter.

NCPA Project Manager shall complete on-line training provided by Contractor in how to create communication templates, and work with Contractor to implement two (2) of the above-mentioned communication templates, in order to facilitate NCPA self-sufficiency in such tasks.

Deliverable 7: Customer Proposal Templates

Contractor shall create one (1) example customer proposal template, for use by the Contracting Members in dealing with their utility customers. Additional customer proposal templates may be developed on a time and materials basis by Contractor upon request by a particular Contracting Member. If additional customer proposal templates are developed, only those Contracting Members who agree to share the costs will be provided the templates.

Deliverable 8: Develop Customer Data Import/Update Template

As part of implementation of the Contracting Members' energy efficiency incentive programs, Contractor shall develop a standard template, for use by all Contracting Members, for customer data import and update. Contractor shall implement up to ten (10) custom fields (as directed by NCPA) to be shared by the Contracting Members to support Contracting Member needs, and shall

also develop up to six (6) page layouts for the Contact and Account objects. To facilitate data entry efficiency. Contractor shall enable tracking of multiple addresses per customer.

Deliverable 9: Payment review and export

As part of implementation of the Contracting Members' energy efficiency incentive programs, Contractor shall develop a standard template for payment file export/import as described below. Individual Contracting Members shall use this format or may request that additional templates be developed on a time and materials basis by Contractor for those Contracting Members requesting it, at the cost of those requesting Contracting Members.

- Incentive payments shall be processed through the Contracting Member financial systems.
- Users may view a list of Project records (or proxy Work Order records) which are ready for payment, based on stage or other filter criteria. User may assign a Batch number (text) to one or more of these records in the list to initiate the payment process and update the payment status. As a best practice, the batch number may contain the date when the batch was generated. A workflow rule may be used to automatically update the Stage (status) or the associated Project or Work Order record.
- Users will print or export these records through a standard report which shall be created for this purpose, and which may be exported as an Excel or CSV file. Typically, this payment report will include the Project and/or WorkOrder unique identifier, the customer Account number, batch number, payment amount, Payee name and details, and payment address.
- Payments will be made at a Project or Work Order level, and shall consolidate incentives for the applicable retrofits.

Allowed users may import data from a payment results file. This file will consist of record IDs for the associated project and/or Work Order, along with additional payment details (e.g., payment ID, check #, check date, amount) to substantiate that payment has been made. A workflow rule may be set up to update the Stage (status) of the associated Project or Work Order records (e.g., "Payment Sent").

Deliverable 10: Address User Profiles and Security Issues

Contractor will work with NCPA and Contracting Members to identify user profiles, territories and roles (as necessary) and permissions to meet security requirements, and shall configure the energyOrbit™ solution to reflect this design. In particular, Contractor shall establish a Territory/Role structure to ensure that Contracting Members can see their own information (but not those of other Contracting Members), and to allow NCPA authorized individuals to access consolidated information from all Contracting Members.

As part of administrator training referenced above, Contractor shall introduce NCPA's system administrator to the fundamentals of User Profile administration and system administrators are encouraged to complete the available on-line tutorials on this topic provided by Salesforce.com. NCPA's system administrator, and other users with a System Administrator Profile, may control user IDs, activate/inactivate users, and reset user passwords. Users may also reset their own passwords after answering security questions, and a new one-time password will be sent to their specified user email address. NCPA may specify password strength settings, and password expiration policies. Each participating Member shall maintain separate and secure program information within the database. Contracting Members will not have access to each other's data.

Deliverable 11: Installation and Deployment

Contractor shall perform an Initial Installation of the energyOrbit™ solution, following establishment of NCPA's Force.com accounts. License fees for use of the energyOrbit™ solution shall commence following this Initial Installation.

Contractor shall develop and test additions and extensions to the core energyOrbit™ solution in a separate development and test environment. Throughout the Project, Contractor may deploy this new functionality to the NCPA production environment. Contractor shall endeavor to provide 24-hour advance notice of these updates, which shall typically be scheduled for Fridays. Contractor shall notify NCPA Project Manager of any such updates, including where practical, a short summary of changes. However, in some instances, emergency maintenance may require installation with less notice.

Deliverable 12: Develop Custom Functionality

Contractor shall develop Energy and Environmental Economics (E3) compliance reporting, consistent with model provided in RFP. This may include custom-programming, and may not be modifiable without assistance of Contractor in the future.

Contractor will develop water program tracking fields, supporting programs for Contracting Members that have water savings, based on specifications and guidance from the City of Roseville, if available. This effort will follow the same structure as other programs for energy savings, and shall be implemented by adding additional fields to track water quantities saved as part of measure, work order and project totals.

This deliverable will be provided at no additional cost, but may follow deployment of other programs for the City of Roseville as a new phase of work.

Deliverable 13: Provide Training

Contractor will prepare and deliver two 2-hour “train-the-trainer” sessions to NCPA staff, which may be delivered via web, as well as functional training on modules along the way.

Contractor will provide an onsite group training with all Contracting Member leads, and the following:

- Follow up webinar-based two (2) hour refresher training with individual utility leads
- Two (2) hour webinar Training for Each Contracting Member Utility as part of the program pilot deployment
- Approximately six (6) hours of formal system administrator trainings for NCPA technical personnel, covering key topics of interest, including custom object structure, customization, reporting, profiles and security or similar matters.

Contractor will prepare training materials, as well as a mid-level “cookbook” (estimated to consist of approximately thirty (30) pages), to describe key activities for setting up a program, starting a project, entering retrofits/measures, and documenting key workflow and approval processes.

Contractor will invite NCPA Project Manager to watch (via web meetings) or participate in certain configuration activities to provide on-the-job training in use and maintenance of the energyOrbit™ solution. NCPA will then provide supporting training of Contracting Member personnel consisting of a reasonable number of hours of group training, not to exceed ten (10) hours.

Contractor will prepare a set of frequently asked questions and solution for the Tier 1 support desk, and provide an additional two (2) hours of remote help desk training in basic support.

Deliverable 14: Ongoing License and Maintenance Fees

Contractor agrees to provide all necessary software licenses, and technical support as part of the license and maintenance fees. The primary purpose of this deliverable is to address problems, potential “bugs” and advanced capability questions related to energyOrbit™. To that end, the following level of support will be provided:

- Best efforts will be made to respond to specific requests within one (1) business day, including an estimate for problem resolution. It is recognized that some items may require more than one business day to resolve.
- Ability for Contracting Members to submit support requests electronically twenty-four (24) hours per day, seven (7) days per week, and speak with live staff during standard business hours (9am-6pm Central Time, excluding weekend and holidays). Contracting Members' inquiries will first be reviewed by NCPA, which will provide Tier 1 support. NCPA will prioritize and escalate such inquiries to Contractor for Tier 2 support as needed, in NCPA's discretion and subject to the limits noted below.
- General product upgrades, those general enhancements to the energyOrbit™ system which are offered at no additional cost to customers, will be provided to NCPA and the Contracting Members during the term of this Agreement. It is understood that some new

- functions may require additional configuration in order to take advantage of the capabilities, which configuration shall be provided by Contractor.
- Up to five (5) priority bug fixes per month – where energyOrbit™ fails to operate according to agreed upon specifications in a way which interferes with the ability of a Contracting Member to enter and process incentives.
 - Up to forty (40) technical support requests during the first thirty (30) days that the product is operational.
 - Up to ten (10) additional technical support requests incidents per month after the first month, to provide Contracting Members additional help or support (for example, creating a new program workflow, or guidance to create a special type of report).
 - Monthly report summaries of case activities, along with a summary of the resolution will be provided by Contractor to NCPA each month during the term of the Agreement, by the tenth (10th) day of the following month.

Other Considerations

The following assumptions will be considered based on the scope of the project and deliverables identified above. Any changes to these assumptions may result in a scope adjustment to fees and/or implementation timeline.

- NCPA Project Manager will coordinate input from Contracting Members and serve as an authorized approver for deliverables and decisions related to system setup and configuration.
- NCPA will be responsible for providing training to Contracting Members beyond the initial deployment identified above.
- NCPA and Contracting Members will be responsible for preparing import data according to templates provided by Contractor, and will be responsible for the quality of such provided information.
- Contractor will not be importing historic project data as part of this scope of work. Individual utilities may arrange to import historic data under separate arrangement.
- NCPA Project Manager will provide content for efficiency measures. Contractor will provide a template for preparing the initial list of measures, which will be imported into energyOrbit™.
- Contractor will import Contracting Member specific data extracted from current tracking spreadsheets and systems, to populate the templates designed in conjunction with Contractor's work under this agreement.
- energyOrbit™ will only be used to administer and support programs for NCPA and Contracting Members. It may not be licensed or operated as a service bureau for other entities, including affiliates of either NCPA or Contracting Members.

Exhibit A-1
FORM OF CONSULTING SERVICES AGREEMENT BETWEEN NCPA AND CRMORBIT, INC.

**CONSULTING SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
crmORBIT, INC. FOR ENERGY EFFICIENCY DATABASE PROGRAM SERVICES,
INCLUDING LICENSE AND MAINTENANCE SERVICES**

This agreement for consulting services ("Agreement") is made by and between the NORTHERN CALIFORNIA POWER AGENCY, a public joint powers agency with offices located at 651 Commerce Drive, Roseville, CA, 95678-6420 ("Agency") and crmOrbit a California Corporation with offices located at 2693 Blucher Valley Road, Sebastopol, CA 94572 ("Consultant") (together sometimes referred to as the "Parties") as of _____, 2012, (the "Effective Date") in Roseville, California.

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to Agency the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In addition, Consultant shall provide to Agency the software licensing and maintenance and support services specified in the licensing Master Agreement and Terms of Use attached as Exhibit A-1. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A or A-1, this Agreement shall prevail.

- 1.1 Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on June 30, 2017, when Consultant completes the work described in Exhibit A and A-1, unless the term of the Agreement is otherwise terminated or modified, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the Agency's right to terminate the Agreement, as provided for in Section 8.
- 1.2 Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a professional manner and shall conform to the standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that Agency, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from Agency of such desire of Agency, reassign such person or persons.
- 1.4 Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to satisfy Consultant's obligations hereunder.
- 1.5 Contracting Members and Member Services Agreement.** Consultant acknowledges that Agency is undertaking this Agreement on behalf of certain of its members, the cities of Alameda, Biggs, Healdsburg, Lodi, and Lompoc; the Plumas-Sierra Rural Electric Cooperative; and the Truckee Donner Public Utility District (jointly the "Contracting Members"), pursuant to an agreement between the Contracting Members and the Agency (the "Member Services Agreement"). Pursuant to the Member Services Agreement, which Consultant has reviewed, and this Agreement, Consultant will be responsible for directly interfacing with representatives of the Contracting Members in addition to those of the Agency.

The Contracting Members are express third party beneficiaries of this Agreement, and are

permitted Users of the software licenses granted hereby consistent with the terms of this Agreement.

Section 2. COMPENSATION. Agency hereby agrees to pay Consultant an amount **NOT TO EXCEED FOUR HUNDRED THIRTY-EIGHT THOUSAND EIGHT HUNDRED SEVENTY-ONE DOLLARS AND SIXTY-THREE CENTS (\$438,871.63)** for or all work set forth in Exhibit A and Exhibit A-1, pursuant to the Consultant's fee schedule which is attached hereto and incorporated as Exhibit B and all reimbursable expenses incurred in performing the work. In the event of a conflict between this Agreement and Consultant's proposal regarding the amount of compensation, this Agreement shall prevail. Agency shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from Agency to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to Agency in the manner specified herein. Except as specifically authorized by Agency, Consultant shall not bill Agency for duplicate services performed by more than one person.

Consultant and Agency acknowledge and agree that compensation paid by Agency to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subConsultants of Consultant. Consequently, the Parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subConsultants may be eligible. Agency therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task or Deliverable Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion of each Deliverable identified in the Scope of Work;
- At Agency's option, for each work item in each Deliverable, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The Consultant's signature.

Invoices shall be sent to:

Northern California Power Agency
651 Commerce Drive
Roseville, California 95678
Attn: Accounts Payable

2.2 Monthly Payment. Agency shall make payments according to the schedule outlined in Table 1 of Exhibit B, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. Agency shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

2.3 Final Payment. Agency shall make the final payment listed in Table 1 of Exhibit B (30) days after submittal to Agency of a final invoice, if all services required have been satisfactorily performed.

2.4 Total Payment. Agency shall pay for the services to be rendered by Consultant pursuant to this Agreement. Agency shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. Agency shall make no payment

for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

- 2.5 **Fees.** Fees for work performed by Consultant shall not exceed the amounts shown on the following fee schedule attached hereto as Exhibit B.
- 2.6 **Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit B. Expenses not listed in Exhibit B are not chargeable to Agency. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.
- 2.7 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.8 **Payment upon Termination.** In the event that the Agency or Consultant terminates this Agreement, the Agency shall compensate the Consultant as provided in Section 9 of Exhibit A-1.
- 2.9 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant, at its own cost and expense, shall procure the types and amounts of insurance listed below for the period covered by the agreement.

- 4.1 **Workers' Compensation.** If Consultant employs any person, Consultant shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident.
- 4.2 **Commercial General and Automobile Liability Insurance.**
 - 4.2.1 **Commercial General Insurance.** Consultant shall maintain commercial general liability insurance for the term of this Agreement, including products liability, covering any loss or liability, including the cost of defense of any action for bodily injury, death, personal injury and property damage which may arise out of the operations of the consultant. The policy shall provide a minimum limit of \$1,000,000 per occurrence/\$2,000,000 aggregate.
 - 4.2.2 **Automobile Liability.** Consultant shall maintain automobile liability insurance for the term of this Agreement covering any loss of liability, including the cost of defense of any action, arising from the operation, maintenance or use of any vehicle (symbol 1), whether or not owned by the Consultant, on or off Agency premises. The policy shall provide a minimum limit of \$1,000,000 per each accident. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general liability insurance.
 - 4.2.3 **General Liability/Umbrella Insurance.** The coverage amounts set forth above may be

met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.

4.3 **Professional Liability Insurance.** None required.

4.4 **All Policies Requirements.**

4.4.1 **Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall, at the sole option of the Agency, provide Agency with (1) a Certification of Insurance that demonstrates compliance with all applicable insurance provisions contained herein; (2) policy endorsements to the general liability policy adding the Northern California Power Agency as an Additional Insured and declaring such insurance primary in regard to work performed pursuant to this Agreement; or (3) upon request by the Agency, complete copies of all policies and/or complete copies of all endorsements that demonstrate compliance with this Section 4.

4.4.2 **Notice of Reduction in or Cancellation of Coverage.** An endorsement must be attached to all insurance obtained in accordance with this Agreement stating that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Agency. Consultant shall also provide thirty (30) days' prior notice to the Agency by certified mail of any impending reduction in the limits or coverage of any insurance policies that form a part of this agreement.

4.5 **Waiver of Subrogation.** Consultant agrees to waive subrogation which any insurer of Consultant may acquire from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of Agency for all work performed by Consultant, its employees, agents and subConsultants.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

5.1 Consultant shall to the fullest extent allowed by law, with respect to all services performed in connection with this Agreement, indemnify, defend and hold harmless the Agency and its officials, commissioners, officers, employees, agents and volunteers, including the Contracting Members and their officials, officers, employees, agents, and volunteers, from and against any and all claims that arise out of, pertain to or relate to the negligence, recklessness or willful misconduct of the Consultant. Consultant will bear all losses, costs, damages, expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such Claims, whether directly or indirectly ("Liabilities"). Such obligations to defend, hold harmless and indemnify the Agency and Contracting Members shall not apply to the extent that such Liabilities are caused by the sole negligence, active negligence, or willful misconduct of the Agency or the Contracting Members. The duty to defend and indemnify expressly extends to any claim of infringement upon copyright or patent relating to the software provided pursuant to this Agreement.

The duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by Agency of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subConsultant of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of Agency, Consultant shall indemnify, defend, and hold harmless Agency for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subConsultants, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Agency.

Section 6. STATUS OF CONSULTANT.

- 6.1 **Independent Consultant.** At all times during the term of this Agreement, Consultant shall be an independent Consultant and shall not be an employee of Agency. Agency shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise Agency shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other Agency, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subConsultants providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by Agency, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of Agency and entitlement to any contribution to be paid by Agency for employer contributions and/or employee contributions for PERS benefits.
- 6.2 **Consultant Not Agent.** Except as Agency may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subConsultants shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subConsultants shall comply with all applicable rules and regulations to which Agency is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to Agency that Consultant and its employees, agents, and any subConsultants have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to Agency that Consultant and its employees, agents, any subConsultants shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subConsultants shall obtain and maintain during the term of this Agreement valid Business Licenses from Agency. Consultant represents and warrants to Agency that Consultant has the right to license all the software being provided to Agency pursuant to this Agreement.

- 7.5 **Nondiscrimination and Equal Opportunity.** In compliance with federal, state and local laws, Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subConsultant, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION

- 8.1 **Termination** (Reserved) .

- 8.2 **Modification.** The Parties may, by mutual written agreement, extend or shorten the end date of this Agreement beyond that provided for in Subsection 1.1. Any such modification to this Agreement, including an adjustment of compensation or reimbursement of costs beyond the amount specified in Section 2 herein, shall be specified in a signed amendment or exhibit to the Agreement.

In the event that one or more, but less than all, of the Contracting Members terminates the Member Services Agreement, and such termination reduces funding available to the Agency for this Agreement, the Parties agree to meet and confer in good faith with respect to modification of the scope of work and price to accommodate such withdrawal.

- 8.3 **Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties.

- 8.4 **Assignment and Subcontracting.** Agency and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique professional competence, experience, and specialized professional knowledge. Moreover, a substantial inducement to Agency for entering into this Agreement was and is the personal reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Agency. **Notwithstanding the foregoing either party may assign this Agreement without consent of the other party in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets which does not involve a direct competitor of the other party.** Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subConsultants noted in the proposal, without prior written approval of the Agency. Where written approval is granted by the Agency, Consultant shall supervise all work subcontracted by Consultant in performing the services; shall be responsible for all work performed by a subConsultant as if Consultant itself had performed such work; the subcontracting of any work to subConsultants shall not relieve Consultant from any of its obligations under this Agreement with respect to the services; and Consultant is obligated to ensure that any and all subConsultants performing any services shall be fully insured in all respects and to the same extent as set forth under Section 4, to Agency's satisfaction.

- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this

Agreement allocating liability between Agency and Consultant shall survive the termination of this Agreement.

- 8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, and such breach is not cured within 45 days of written notice, Agency's remedies shall include, but not be limited to, the following:
- 8.6.1 Terminate the Agreement;
 - 8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
 - 8.6.3 Consultant to provide an export of data entered into the energyOrbit platform to Agency at Consultant's expense;
 - 8.6.4 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or
 - 8.6.4 Obtain a refund of any pre-paid amounts for services applicable since the date of breach.
 - 8.6.5 Total financial remedies for breach by Consultant shall not exceed the amounts actually paid to Consultant for the project to date, provided however, that such limitation shall not apply to claims related to either violation of copyright or negligent disclosure of personally identifying customer information.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Consultant's Performance.** Subject to the terms of the licensing agreement entered into concurrently herewith by the Parties (the "Master Use Agreement") all reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the Agency. Consultant hereby agrees to deliver those documents to the Agency upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the Agency and are not necessarily suitable for any future or other use. Agency and Consultant agree that, until final approval by Agency, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both Parties.
- Consultant agrees that the authorized representatives of the Contracting Members shall be entitled to recognition as Users under the Master Agreement.
- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any

time during regular business hours, upon oral or written request of the Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under the Agreement.

- 9.4 **Confidential Information and Disclosure.** During the term of this Agreement, either party or the Contracting Members (the "Disclosing Party") may disclose confidential, proprietary or trade secret information (the "Information"), to the other party (the "Receiving Party"). All such Information made available in a tangible medium of expression (such as, without limitation, on paper or by means of magnetic tapes, magnetic disks or other computer media) shall be marked in a prominent location to indicate that it is the confidential, proprietary and trade secret information of the Disclosing Party at the time of disclosure to the Receiving Party. The Receiving Party shall hold the Disclosing Party's Information in confidence and shall take all reasonable steps to prevent any unauthorized possession, use, copying, transfer or disclosure of such Information. The Receiving Party shall not attempt to reverse engineer or in any manner create any product or information which is similar in appearance to or based on the Information provided by the Disclosing Party. The Receiving Party shall not disclose the Disclosing Party's Information to any person other than those of the Receiving Party's employees, agents, consultants, Consultants and subConsultants who have a need to know in connection with this Agreement.

The Receiving Party's confidentiality obligations hereunder shall not apply to any portion of the Disclosing Party's Information which:

- (a) Has become a matter of public knowledge other than through an act or omission of the Receiving Party;
- (b) Has been made known to the Receiving Party by a third party in accordance with such third party's legal rights without any restriction on disclosure;
- (c) Was in the possession of the Receiving Party prior to the disclosure of such Information by the Disclosing Party and was not acquired directly or indirectly from the other party or any person or entity in a relationship of trust and confidence with the other party with respect to such Information;
- (d) The Receiving Party is required by law to disclose; or
- (e) Has been independently developed by the Receiving Party from information not defined as "Information" in this Agreement, as evidenced by Receiving Party's written records.

The Receiving Party shall return or destroy the Disclosing Party's Information (including all copies thereof) to the Disclosing Party promptly upon the earliest of any termination of this Agreement or the Disclosing Party's written request. Notwithstanding the foregoing, the Receiving Party may retain one copy of such Information solely for archival purposes, subject to the confidentiality provisions of this Agreement. Consultant understands that NCPA is a public agency and is subject to the laws that may compel it to disclose information about Consultant's business.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in

the County of Placer or in the United States District Court for the Eastern District of California. Enforcement of this Agreement is subject to alternative dispute resolution provisions in Section 10.13 of the Agreement and arbitration provisions in Section 15 of Exhibit A-1.

- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 10.6 **Use of Recycled Products.** Consultant shall endeavor to prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any Agency official in the work performed pursuant to this Agreement. No officer or employee of Agency shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the Agency. If Consultant was an employee, agent, appointee, or official of the Agency in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the Agency for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

- 10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 **Contract Administration.** This Agreement shall be administered by Jane Cirrincione, Assistant General Manager of Legislative & Regulatory Affairs her designee, who shall act as the Agency's representative. All correspondence shall be directed to or through the representative.
- 10.10 **Notices.** Any written notice to Consultant shall be sent to:

Seth Golub
Vice President Professional Services
2693 Blucher Valley Road
Sebastopol, CA 95472

Any written notice to Agency shall be sent to:

James H. Pope
General Manager
Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678

With a copy to:

Michael F. Dean
General Counsel
Northern California Power Agency
Meyers Nave
555 Capitol Mall, Suite 1200
Sacramento, CA 95814

- 10.11 **Professional Seal.** Where applicable in the determination of the Agency, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 10.12 **Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein. In the event of any conflict between the provisions of any exhibit and this Agreement, the provisions of this Agreement shall govern.
- 10.13 **Alternative Dispute Resolution.** If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Agency and Consultant agree to resolve the dispute in accordance with the following:
- 10.13.1 Each party shall designate a senior management or executive level representative to negotiate any dispute;
- 10.13.2 The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
- 10.13.3 If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
- 10.13.4 The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.
- 10.13.5 The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.

10.13.6 The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code § 900, *et. seq.*

10.14 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

The Parties have executed this Agreement as of the date signed by the Agency.

NORTHERN CALIFORNIA POWER AGENCY

crmOrbit, Inc.

Date _____

Date _____

JAMES H. POPE, General Manager

SETH GOLUB, Vice President

Attest:

Assistant Secretary of the Commission

Approved as to Form:

General Counsel

CONSULTING SERVICES AGREEMENT EXHIBIT A SCOPE OF SERVICES

1. Background

This consultant services agreement ("CSA") between NCPA and crmOrbit ("Consultant") includes a licensing and maintenance agreement ("Master Agreement") between the same two parties attached as Exhibit A-1. NCPA is also concurrently entering into a Member Services Agreement on behalf of seven (7) of its member agencies who will receive the energy efficiency database services provided by Consultant ("Contracting Members") and who will be permitted Users under the terms of the license.

This Exhibit A consists of this general description of the Scope of Services, NCPA's Request for Proposals for Demand Side Management Database dated July 25, 2011 ("RFP"), and Consultant's Response to Request for Proposals ("Response") both of which are incorporated herein by this reference (but are not attached) as well as the Master Agreement in Exhibit A-1. Each of the documents shall be read as a part of a whole, integrated Scope of Services. However, in the event of any conflict, this Exhibit shall govern over the Master Agreement, the RFP and Response, and the Response shall govern over the RFP.

2. Scope of Work in General

During initial implementation, Consultant will configure up to twenty (20) energy efficiency incentive programs, some of which will be shared by the Contracting Members as specified below, and configure up to five (5) different business/workflow processes to be shared by the Contracting Members.

Of the initial set of twenty (20) energy efficiency incentive programs, six (6) will be template (generic) programs to be shared by the Contracting Members and the remaining fourteen (14) will be utility-specific programs with two (2) for each of the seven (7) Contracting Members (City of Alameda, City of Biggs, City of Healdsburg, City of Lodi, City of Lompoc, Plumas-Sierra REC, and Truckee Donner PUD).

Consultant will train Contracting Member Authorized Representatives to configure additional programs and create templates for program types that can be accessed by all authorized users to allow for rapid deployment of new programs with similar workflows.

Consultant will license all programs and processes to NCPA under the terms of the Master Agreement. Each Contracting Member's Authorized Representative, or other designated staff of the Contracting Member, shall be a "User" under the terms of the Master Agreement entitled to utilize the programs and databases provided.

3. The following provides a general list of deliverables to be provided:

Deliverable 1: Develop Project Plan

Consultant shall conduct an initial planning meeting with the NCPA Project Manager and representatives of the Contracting Members. During this session, Consultant will fill in a communications plan identifying key stakeholders, concerns, and communications approach. Consultant shall provide an updated midlevel project plan based upon the example provided in the RFP response document. The project plan shall incorporate reasonable key payment milestones and deliverable dates for each of the remaining thirteen (13) deliverables as mutually agreed upon by NCPA and Consultant.

Deliverable 1 due date: This deliverable will be submitted for approval to NCPA not later than four (4) weeks from the Effective Date.

Deliverable 2: Develop Energy Efficiency Measures

Consultant will work with NCPA Project Manager and Contracting Member representatives to develop a variety of prescriptive energy efficiency measures, which permit the measurement or calculation of the amount of energy being saved. NCPA shall prepare measures and deemed savings/incentive parameters in a spreadsheet template provided by Consultant.

If needed, Consultant will also configure up to five (5) formula-based prescriptive measure types, in which users provide additional choices/inputs to generate calculated savings, and train NCPA's Project Manager to set up additional such measures as may be needed in the future. Consultant will also set up additional such measures as requested by NCPA on a time and materials basis.

Deliverable 3: Set Up General Program Parameters

Consultant shall work with NCPA Project Manager and Contracting Member Authorized Representatives to set up general program parameters for the initial Contracting Member energy efficiency incentive programs that will be deployed.

Deliverable 4: Develop Program & Measure Requirements

Consultant shall work with NCPA Project Manager and Contracting Member Authorized Representatives to enter program-level and measure-level requirements and develop survey questions to support the energy efficiency incentive programs of the Contracting Members.

Deliverable 5: Create Reports and Dashboards

Consultant will work with NCPA Project Manager and Contracting Member Authorized Representatives to create up to ten (10) reports and ten (10) dashboards for the Contracting Members' energy efficiency incentive programs. Consultant will create five (5) initial reports and five (5) initial dashboards, to be shared by the Contracting Members. Following completion of the initial reports and dashboards, Consultant will provide on-line training to Contracting Members' Authorized Representatives and to NCPA staff on how to create additional reports and dashboards. Upon completion of the on-line training, NCPA shall work with Consultant to implement five (5) additional reports and five additional dashboards to be shared by the Contracting Members.

Deliverable 6: Create Communication Templates

Consultant will work with NCPA Project Manager and Contracting Member Authorized Representatives to create up to four (4) e-mail or mail-merge communication templates in Microsoft Word to be shared by the Contracting Members. These may be used, for example, to create customer commitment letters, application acceptance/decline letters and missing items letter.

NCPA Project Manager shall complete on-line training provided by Consultant in how to create communication templates, and work with Consultant to implement two (2) of the above-mentioned communication templates, in order to facilitate NCPA self-sufficiency in such tasks.

Deliverable 7: Customer Proposal Templates

Consultant shall create one (1) example customer proposal template, for use by the Contracting Members in dealing with their utility customers. Additional customer proposal templates may be developed on a time and materials basis by Consultant upon request by a particular Contracting Member. If additional customer proposal templates are developed, only those Contracting Members who agree to share the costs will be provided the templates.

Deliverable 8: Develop Customer Data Import/Update Template

As part of implementation of the Contracting Members' energy efficiency incentive programs, Consultant shall develop a standard template, for use by all Contracting Members, for customer data import and update. Consultant shall implement up to ten (10) custom fields (as directed by NCPA) to be shared by the Contracting Members to support Contracting Member needs, and shall also develop up to six (6) page layouts for the Contact and Account objects. To facilitate data entry efficiency. Consultant shall enable tracking of multiple addresses per customer.

Deliverable 9: Payment review and export

As part of implementation of the Contracting Members' energy efficiency incentive programs, Consultant shall develop a standard template for payment file export/import as described below. Individual Contracting Members shall use this format or may request that additional templates be developed on a time and materials basis by Consultant for those Contracting Members requesting it, at the cost of those requesting Contracting Members.

- Incentive payments shall be processed through the Contracting Members' financial systems.
- Users may view a list of Project records (or proxy Work Order records) which are ready for payment, based on stage or other filter criteria. Users may assign a Batch number (text) to one or more of these records in the list to initiate the payment process and update the payment status. As a best practice, the batch number may contain the date when the batch was generated. A workflow rule may be used to automatically update the Stage (status) or the associated Project or Work Order record.
- Users may print or export these records through a standard report which shall be created for this purpose, and which may be exported as an Excel or CSV file. Typically, this payment report will include the Project and/or Work Order unique identifier, the customer Account number, batch number, payment amount, Payee name and details, and payment address.
- Payments will be made at a Project or Work Order level, and shall consolidate incentives for the applicable retrofits.

Allowed users may import data from a payment results file. This file will consist of record IDs for the associated project and/or Work Order, along with additional payment details (e.g., payment ID, check #, check date, amount) to substantiate that payment has been made. A workflow rule may be set up to update the Stage (status) of the associated Project or Work Order records (e.g., "Payment Sent").

Deliverable 10: Address User Profiles and Security Issues

Consultant will work with NCPA and Contracting Members to identify user profiles, territories and roles (as necessary) and permissions to meet security requirements, and shall configure the energyOrbit™ solution to reflect this design. In particular, Consultant shall establish a Territory/Role structure to ensure that Contracting Members can see their own information (but not those of other Contracting Members), and to allow NCPA authorized individuals to access consolidated information from all Contracting Members.

As part of administrator training referenced above, Consultant shall introduce NCPA's system administrator to the fundamentals of User Profile administration and system administrators are encouraged to complete the available on-line tutorials on this topic provided by Salesforce.com. NCPA's system administrator, and other users with a System Administrator Profile, may control user IDs, activate/inactivate users, and reset user passwords. Users may also reset their own passwords after answering security questions, and a new one-time password will be sent to their

specified user email address. NCPA may specify password strength settings, and password expiration policies. Each participating Member shall maintain separate and secure program information within the database. Contracting Members will not have access to each other's data.

Deliverable 11: Installation and Deployment

Consultant shall perform an Initial Installation of the energyOrbit™ solution, following establishment of NCPA's Force.com accounts. License fees for use of the energyOrbit™ solution shall commence following this Initial Installation.

Consultant shall develop and test additions and extensions to the core energyOrbit™ solution in a separate development and test environment. Throughout the Project, Consultant may deploy this new functionality to the NCPA production environment. Consultant shall endeavor to provide 24-hour advance notice of these updates, which shall typically be scheduled for Fridays. Consultant shall notify NCPA Project Manager of any such updates, including where practical, a short summary of changes. However, in some instances, emergency maintenance may require installation with less notice.

Deliverable 12: Develop Custom Functionality

Consultant shall develop Energy and Environmental Economics (E3) compliance reporting, consistent with model provided in RFP. This may include custom-programming, and may not be modifiable without assistance of Consultant in the future.

Consultant will develop water program tracking fields, supporting programs for Contracting Members that have water savings, based on specifications and guidance from the City of Roseville, if available. This effort will follow the same structure as other programs for energy savings, and shall be implemented by adding additional fields to track water quantities saved as part of measure, work order and project totals.

This deliverable will be provided at no additional cost, but may follow deployment of other programs for the City of Roseville as a new phase of work.

Deliverable 13: Provide Training

Consultant will prepare and deliver two 2-hour "train-the-trainer" sessions to NCPA staff which may be delivered via web, as well as functional training on modules during all stages of the project.

Consultant will provide an onsite group training with all Contracting Member Authorized Representatives, and additionally provide the following:

- Follow up webinar-based two (2) hour refresher training with individual Contracting Member representatives.

- Two (2) hour webinar Training for each Contracting Member as part of the program pilot deployment .
- Approximately six (6) hours of formal system administrator trainings for NCPA technical personnel, covering key topics of interest, including custom object structure, customization, reporting, profiles and security or similar matters.

Consultant will prepare training materials, as well as a mid-level “cookbook” (estimated to consist of approximately thirty (30) pages), to describe key activities for setting up a program, starting a project, entering retrofits/measures, and documenting key workflow and approval processes.

Consultant will invite NCPA Project Manager to watch (via web meetings) or participate in certain configuration activities to provide on-the-job training in use and maintenance of the energyOrbit™ solution and provide training sufficient to permit NCPA to then provide supporting training of Contracting Member personnel.

Consultant will prepare a set of frequently asked questions and solution for the Tier 1 support desk, and provide an additional two (2) hours of remote help desk training in basic support.

Deliverable 14: Ongoing License and Maintenance Fees

Consultant agrees to provide technical support as part of the license and maintenance fees. The primary purpose of this deliverable is to address problems, potential “bugs” and advanced capability questions related to energyOrbit™. To that end, the following level of support will be provided:

- Best efforts will be made to respond to specific requests within one (1) business day, including an estimate for problem resolution. It is recognized that some items may require more than one business day to resolve.
- Ability for Contracting Members to submit support requests electronically twenty-four (24) hours per day, seven (7) days per week, and speak with live staff during standard business hours (9am-6pm Central Time, excluding weekend and holidays). Contracting Member inquiries will be initially reviewed by NCPA which will provide Tier 1 support. NCPA will prioritize Contracting Member inquiries and refer them to Consultant for Tier 2 support, in NCPA's discretion and subject to the limits noted below.
- General product upgrades, those general enhancements to the energyOrbit™ system which are offered at no additional cost to customers, will be provided to NCPA and the Contracting Members during the term of this Agreement. It is understood that some new functions may require additional configuration in order to take advantage of the capabilities, which configuration shall be provided by Consultant.
- Up to five (5) priority bug fixes per month – where energyOrbit™ fails to operate according to agreed upon specifications in a way which interferes with the ability of a Contracting Member to enter and process incentives.

- Up to forty (40) technical support requests during the first thirty (30) days that the product is operational.
- Up to ten (10) additional technical support requests incidents per month after the first month, to provide Contracting Members additional help or support (for example, creating a new program workflow, or guidance to create a special type of report).
- Monthly report summaries of case activities, along with a summary of the resolution will be provided by Consultant to NCPA each month during the term of the Agreement, by the tenth (10th) day of the following month.

Other Considerations

The following assumptions will be considered based on the scope of the project and deliverables identified above. Any changes to these assumptions may result in a scope adjustment to fees and/or implementation timeline.

- NCPA Project Manager will coordinate input from Contracting Members and serve as an authorized approver for deliverables and decisions related to system setup and configuration.
- NCPA will be responsible for providing training to Contracting Members beyond the initial deployment identified above.
- NCPA and Contracting Members will be responsible for preparing import data according to templates provided by Consultant, and will be responsible for the quality of such provided information.
- Consultant will not be importing historic project data as part of this scope of work. Individual utilities may arrange to import historic data under separate arrangement.
- NCPA Project Manager will provide content for efficiency measures. Consultant will provide a template for preparing the initial list of measures, which will be imported into energyOrbit™.
- Consultant will import Contracting Member specific data extracted from current tracking spreadsheets and systems, to populate the templates designed in conjunction with Consultant's work under this agreement.
- energyOrbit™ will only be used to administer and support programs for NCPA and Contracting Members. It may not be licensed or operated as a service bureau for other entities, including affiliates of either NCPA or Contracting Members.

END OF EXHIBIT A

**CONSULTING SERVICES AGREEMENT
EXHIBIT B
COMPENSATION SCHEDULE AND HOURLY FEES**

Compensation for all tasks, including hourly fees and expenses, amount shall **NOT TO EXCEED FOUR HUNDRED THIRTY-EIGHT THOUSAND EIGHT HUNDRED SEVENTY-ONE DOLLARS AND SIXTY-THREE CENTS (\$438,871.63)**. The hourly rates and or compensation break down and an estimated amount of expenses is as follows:

| Item | One-time Implementation Costs | Annual Recurring Costs | Comments |
|--|-------------------------------|------------------------|--|
| Consulting and implementation | \$83,145.27 | | Fixed fee |
| energyOrbit™ license, support/maintenance fees | | \$69,045.27 | Please see below for details, up to 45 users |
| Customer Web Application Portal | | \$2,100 | Non-licensed users can enter applications on line. Up to 7,000 applications per year, not to exceed 7,000 active logins. |
| Totals | \$83,145.27 | \$71,145.27 | |

Pricing Notes:

- Additional consulting beyond the scope of this agreement provided specifically to NCPA member utilities will be provided at needed for in blocks of 30 hours at a \$100 per hour, under a separate agreement between Member and Contractor.
- License Fees shall commence upon delivery by Contractor of the included deliverables for the NCPA initial template programs.
- Any incremental time and materials charges for design of additional scope items shall be billed within 10 days of the end of the month in which the time was incurred, and payment shall be due and payable within 30 days of receipt of invoice.
- NCPA shall reimburse Contractor for actual, reasonable travel-related expenses for travel approved in advance by NCPA (at coach rates and IRS mileage reimbursement rates), as well as approved third-party software expenses as might be required. All reimbursement shall be due and payable within 15 days of submission of an itemized expense report with attached receipts. NCPA's Project Manager may approve, in writing, additional travel expenses beyond the "not to exceed" amount in an amount not to exceed fifteen thousand (\$15,000) dollars."
- NCPA shall not be responsible for Contractor travel to and between Contractor offices, office space, communications and incidental expenses of Contractor including telephone, facsimile, and photocopying charges.
- Payments shall be due at the times and in the amounts shown on Table 1 which is attached to this Exhibit.

NOTE: As a public agency, NCPA shall not reimburse Consultant for costs in excess of those permitted by the Internal Revenue Service.

Table 1
Payment Schedule

| Table 1. | | | |
|---|---|---------------|---|
| Payable/Due date | Category | Amount | Description |
| Payment #1: Project commencement (Implementation Fee – 30%) (Initial License Fee) Date: 30 days after contract begins | Professional Services energyOrbit licenses/hosting | \$29,943.58 | Project Implementation License fees for development purposes |
| Payment #2: (20% of implementation) Date: 60 days after contract begins | Professional Services | \$16,629.05 | Project Implementation (Configuration of NCPA pilot program) |
| Payment #3: (20% of implementation) Date: 90 days after contract begins | Professional Services | \$16,629.05 | Project Implementation Delivery of all functional enhancements |
| Payment #4: (20% of implementation) Date: 120 days after contract begins | Professional Services | \$16,629.05 | Project Implementation Deployment of seven member utility programs |
| Payment #5: (10% of implementation) Final Signoff Date: No later than 7/30/2011, or 30 days following completion of deliverables, whichever is sooner. | Professional Services | \$8,314.53 | Final Sign off- training complete, etc |
| First Year License Fees Beginning 7/1/2012 | energyOrbit licenses / hosting | \$73,000 | Remaining license fees for first year (Up to 45 users) |
| Annual License Fees Beginning 7/1/2013 | | \$71,145.27 | Quarterly payments, provided to Contractor each September 30, December 31, March 31, and June 30. |
| <p style="text-align: center;"><u>Adjustments to Payment Schedule if Additional NCPA Member Utilities Join the Project</u></p> <ul style="list-style-type: none"> • One time Implementation fee- \$20,000 • Per user fees = \$500/user/year. \$750/admin user/year • License fees = 2% of DSM and water savings program incentive budget | | | |

CONSULTING SERVICES AGREEMENT
EXHIBIT A-1
crmOrbit LICENSING MASTER AGREEMENT AND TERMS OF USE

THIS MASTER AGREEMENT AND TERMS OF USE is Exhibit A-1 to the Consultant Services Agreement between Northern California Power Agency (hereinafter called "CLIENT", "Customer") and crmOrbit, Inc. ("crmOrbit") a California corporation, having an office at 2693 Blucher Valley Road, Sebastopol, CA 94572, collectively "the Parties".

These energyOrbit "EO" Terms of Use ("Terms of Use") govern the provision of the energyOrbit Application Service by crmOrbit to CLIENT. These Terms of Use, Statements of Work ("SOW") signed by the Parties, and any policies or other documents expressly incorporated by reference herein or therein are collectively referred to as the "Agreement". The Agreement shall be effective as of the date set forth below the Customer signature (the "Effective Date").

If Customer signs and returns the Agreement and/or SOW but does not complete the date of signature, crmOrbit may fill in the date of signature with the date it receives the signed SOW.

1. Definitions.

- "EO Service" means the application referred to as energyOrbit which has been developed by crmOrbit and is available to operate in conjunction with the Salesforce.com® (SFDC) CRM and/or Force.com® Platform Service as a stand-alone product. Both editions are hosted by SFDC. The EO Service also includes any EO Service documentation and any other updates, or upgrades to such EO Service which may be provided by crmOrbit from time to time in connection with this service.
- "Consultant" means an individual or entity providing services or other assistance to crmOrbit or CLIENT, as applicable.
- "Us" means crmOrbit.
- "crmOrbit Content" means the audio, video and visual information, documents, software, products and services contained in, or made available to CLIENT in the course of using the EO Service.
- "SFDC" means Salesforce.com, Inc., the third party provider of application and platform services hosting the EO service in conjunction with the SFDC Service.
- "Force.com® platform" means the infrastructure provided by Salesforce.com including but not limited to database, user interface, security controls. For the

purpose of definition of the term, "Force.com", Force.com is synonymous to SFDC Services.

- "SFDC Service" means the application or platform service being provided by SFDC with which the EO Service interoperates.
- "Start Date" means the date EO Services fees commence for the applicable organization as indicated in Addendum(s) that are executed in counterparts which, taken together, shall form one legal instrument of this Agreement.
- "User" means each CLIENT employee(s) or Consultant(s) who are (i) authorized to use the EO Service and have been supplied with Credentials by CLIENT (or by crmOrbit at CLIENT's request).
- "Additional Users" means additional users that are added to the pool of existing SFDC licensees subsequent to commencement of this Agreement.
- "Affiliated Organizations" or "Affiliates" means independent contractors, Trade Allies, Energy Services Companies (ESCOs), energy consultants, government agencies and regulatory regimes with whom CLIENT conducts business and has a need to share information tracked in the Service.
- "Client" means a utility or other agency that engages in a contractual relationship with CLIENT, Inc. for the administration, implementation and/or delivery of energy efficiency program services.

2. Service Provided.

- 2.1 License. crmOrbit grants CLIENT a license, allowing a limited number of named Users to use, administer and customize the EO Service for the sole purpose of administering, managing and tracking energy efficiency and conservation programs on behalf of its Clients according to terms specified in an attached Exhibit or Statement of Work to this Agreement. Without limiting the foregoing, CLIENT and its affiliates may not use the EO services to administer, manage and/or track other clients or energy efficiency programs except as provided for in a related SOW or Addendum to this Agreement.
- 2.2 Deployment. crmOrbit may provide professional services related to deployment of energyOrbit as specified in an applicable Addendum of Statement of Work to this Agreement.
- 2.3 Technical Support. If support is required by CLIENT, crmOrbit will provide support for the EO Service during the Term via the crmOrbit Support Services in accordance with terms specified in applicable SOW or Addendum or Service Level Agreement (SLA) between crmOrbit and CLIENT.

- 2.3.1 Unless otherwise specified in an Addendum or Statement of Work, crmOrbit will provide Tier 2 technical support with an expected 1 business day response for contracts involving payment of a Licensing Fee. Technical support requests will be tracked by a formal tracking mechanism (based on Salesforce or other online tracking system). CLIENT shall provide Tier 1 support to its users and Clients.
- 2.4 Upon support request from CLIENT, crmOrbit will make an initial determination in good faith as to whether the issue is with the EO Service or the SFDC Service. If the issue is with the SFDC Service, CLIENT agrees to contact SFDC directly for support for the SFDC Service.
- 2.5 Upgrades. crmOrbit shall from time to time in crmOrbit's discretion provide upgrades to the EO Services at no additional charge to CLIENT. These upgrades may require additional professional services to take advantage of certain new functionality, and such professional services are not included in the upgrade. As a "cloud computing" or "software-as-a-service" solution, crmOrbit may centrally implement certain patches and bug fixes on behalf of its customers.
- 2.6 CLIENT may contact crmOrbit to purchase training for the EO Service, which shall be specified in an applicable Statement of Work.
- 2.7 Subcontracting. crmOrbit retains the right to subcontract any or all of the EO Service to be performed under this Agreement to a qualified subcontractor of crmOrbit's choosing. In such event, crmOrbit shall remain obligated to CLIENT for the work subcontracted. crmOrbit shall ensure that such subcontractors shall be bound by confidentiality agreements substantially similar to those signed by crmOrbit on behalf of CLIENT. crmOrbit agrees to notify CLIENT if and when subcontractors are to be used. CLIENT reserves the right to approve the use of specific subcontractors if there is a perceived conflict of interest or specific concern about the specific subcontractor selected by crmOrbit.

Licensor shall remain responsible for obligations, services and functions performed by subcontractors to the same extent as if such obligations, services and functions were performed by Licensor's employees and for purposes of this Agreement such work shall be deemed work performed by Licensor. Licensor shall be CLIENT's sole point of contact regarding the Services, including with respect to payment.

2.8 Escrow of Source Code.

Immediately following the Acceptance of the initial and subsequently delivered Software, Licensor, at CLIENT's expense, will provide a copy of the Source Code for such initial and subsequently delivered Software to a recognized third-party escrow

agent under a duly executed escrow agreement (the "Escrow Agreement"). Throughout the term of the License, Licensor shall assure that such escrowed Source Code reflects the most current version of the Software licensed to CLIENT. Under the terms of the Escrow Agreement, CLIENT may itself or have designated third-parties audit the escrowed Source Code for compliance with the terms of this Agreement and the Escrow Agreement.

2.9 Use of Source Code.

If Licensor fails to provide support for the Software in accordance with any maintenance agreement between the Parties due to insolvency, abandonment of licensing or supporting the Software as a line of business, or otherwise, (a) CLIENT may access and use the Software's Source Code, applicable compilers, and other information and tools necessary to modify, upgrade, improve, or create derivative works from, the Source Code, either directly from Licensor or through the third-party escrow agent, as necessary for CLIENT to make continued use of the Software in its business, which access and use will otherwise be governed by the terms of this Agreement and by the Escrow Agreement, and (b) the License will be deemed to have been automatically amended to include the right to modify, and to authorize a third-party to modify on CLIENT's behalf, the Source Code as provided herein. CLIENT's use of the Source Code under the terms of this Section 2.9 shall not constitute a termination of this Agreement.

3. **Order Process.** The initial order for the EO Service is set forth in the initial SOW and or Addendums(s) which references these Terms of Use. Orders for additional licenses will be made by mutual execution of an additional SOW and/or Addendum(s) and any such additional license will be provided access to the EO Service in accordance with terms contained in this Agreement. Any terms and conditions of any purchase orders or acknowledgements that are inconsistent with or in addition to the terms and conditions of this Agreement and an executed SOW or Addendum(s) will not apply.

4. Fees and Payment Terms.

- 4.1 CLIENT will pay crmOrbit the amounts set forth in Exhibit B of the consultant services agreement between CLIENT and crmOrbit for the EO Service or any other service specified. All payments for EO Services will be due as shown in Exhibit B of the consultant services agreement.
- 4.2 Added licenses will be subject to the following: (i) added licenses will be coterminous with the preexisting Term, (ii) or Term as specified in an Addendum to this Agreement. (iii) crmOrbit reserves the right to increase the price upon renewal, subject to negotiation by parties.
- 4.3 All payment obligations are non-cancelable and all amounts paid are nonrefundable. CLIENT is responsible for paying for all licensing ordered for the entire Term, whether

or not CLIENT is actively using the EO Service except as otherwise provided in a Statement of Work or in Section 9 – Term and Termination. A suspension of service for overdue payment will not constitute a termination of the Agreement nor will it relieve CLIENT of any of its obligations or liabilities under the Agreement. CLIENT will continue to be charged EO Service fees during any period of suspension.

- 4.4 Payment from CLIENT is due within thirty (30) days from the date of invoice, unless stated otherwise in related Addenda or Scope of Work documents. CLIENT may be charged a late fee of 1.5 % per month (or the maximum rate allowed by applicable law if it is less) on any undisputed amount not paid when due. In addition, in the event that CLIENT is delinquent in the payment of any amounts due to crmOrbit, crmOrbit may suspend access to the EO Service within 10 business days of delinquency, without advance written notice to CLIENT.
- 4.5 The fees set forth in the SOW and/or Addendum(s) do not include taxes unless stated otherwise. Unless CLIENT provides crmOrbit with a valid tax exempt certificate on or before the Effective Date of this the Agreement, CLIENT will pay, and indemnify and hold crmOrbit harmless for, all applicable sales, use, VAT, excise, import, export, property, withholding or similar taxes or duties in connection with the provision of the EO Service to CLIENT by crmOrbit (including any interest or penalties thereon resulting from CLIENT's failure to pay such taxes or other charges on a timely basis). CLIENT will notify crmOrbit in writing in the event CLIENT experiences a change in its tax exempt status during the Term.
- 4.6 CLIENT will pay the License Fees due under this Agreement and under a formula specified in an applicable SOW or Addendum. Applicable fees shall be due and payable within 30 days from the beginning of the term in which the licenses will be used unless otherwise set forth in the applicable SOW or Addendum. CLIENT shall send a report documenting the Users who will access the system along with payment. crmOrbit shall have a right to audit all relevant records related to computation of license fees due, at a reasonable agreed-to time, at its own expense, once per calendar year. Should the results of such audit indicate that crmOrbit is due additional fees in excess of five percent (5%) of the amounts indicated by CLIENT reports, CLIENT shall reimburse crmOrbit for the additional amount due along with the cost of the audit and a service charge of four percent (4%) of any additional amounts due.

5. CLIENT Obligations.

- 5.1 User Administration. The EO Service will be password-protected and only Users who have properly registered and received a login ID and password ("Credentials") will be able to access the EO Service. CLIENT represents and warrants that each User that registers under CLIENT's account is, and during the Term will be an authorized agent of CLIENT for purposes of this Agreement. CLIENT will be solely responsible for administering and monitoring the confidentiality and use of the Credentials. Upon the

termination of employment of any User and or access granted to affiliated organization, CLIENT will immediately terminate access of that individual to the EO Service. CLIENT shall: (i) notify crmOrbit promptly of any unauthorized use of any Credentials or any other suspected violation of this Agreement and (ii) not share IDs and passwords between two or more users and (iii) not impersonate another SFDC Service user or provide false identity information to gain access to or use the EO Service. This Agreement is not a sale and does not convey any rights of ownership in or related to the EO Service, the SFDC Service or the intellectual property rights owned by crmOrbit or SFDC. The salesforce.com name, the salesforce.com logo, and the product names associated with the Service are trademarks of salesforce.com or third parties, and no right or license is granted to use them.

5.2 Compliance with Laws. CLIENT is responsible for all activity occurring under CLIENT's User accounts and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with the use of the EO Service, including those related to data privacy, international communications and the transmission of technical or personal data.

5.3 Prohibited Uses. CLIENT may not modify, rent, sublease, sublicense, assign, use as a service bureau, copy, lend, adapt, translate, sell, distribute, derive works from, decompile or reverse engineer the EO Service or any crmOrbit intellectual property, except as explicitly permitted hereunder. Unless otherwise expressly set forth in an SOW and/or addendums(s), the EO Service is provided solely for the benefit of CLIENT, and not, by implication or otherwise, to any parent, subsidiary or affiliate of CLIENT. CLIENT may not permit access to the EO Service to a competitor of crmOrbit, except with crmOrbit's prior written consent. In addition, CLIENT may not access the EO Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes. CLIENT may use the EO Service only for CLIENT's business purposes. CLIENT and pre-authorized Users from organizations affiliated with the CLIENT shall not: (i) store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material in violation of third party privacy rights; (ii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iii) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (iv) attempt to gain unauthorized access to the EO Service or its related systems or networks.

6. Ownership and Confidential Information.

6.1 CLIENT Ownership. As between CLIENT and crmOrbit, CLIENT will retain all right, title and interest in and to any data, information or materials provided by CLIENT as well as all information processed by the EO Service regarding individual Users ("CLIENT Data"). CLIENT grants to crmOrbit a non-exclusive license to use, copy, store, modify and display the CLIENT Data solely to the extent necessary to provide

the EO Service to CLIENT. CLIENT, not crmOrbit, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all CLIENT Data, and crmOrbit shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any CLIENT Data.

- 6.2 crmOrbit Ownership. crmOrbit will retain all right, title and interest in and to all proprietary rights with respect to the EO Service together with any and all crmOrbit Content and other technology that enables the provision of the EO Service, any training materials, product documentation, whitepapers, or deliverables provided by crmOrbit under the Agreement, and any suggestions, ideas, enhancement requests, feedback, recommendations for modifications or improvements to the EO Service provided by CLIENT. All rights not expressly granted to CLIENT hereunder or as part of an applicable addendum or statement of work are reserved by crmOrbit and its licensors.
- 6.3 Confidential Information. "Confidential Information" means all information disclosed by crmOrbit to CLIENT, before or after the Effective Date, and generally not publicly known. Confidential Information of crmOrbit includes, without limitation, the EO Service, Credentials, materials provided by crmOrbit, and any and all product documentation, whitepapers, product guides, data sheets and training materials. The Agreement, including the terms in the SOW, are Confidential Information. Confidential Information does not include information which CLIENT can document: (i) was in the possession of or known by it without an obligation of confidentiality prior to receipt from crmOrbit, (ii) is or becomes general public knowledge through no fault or acts of CLIENT; (iii) is or becomes lawfully available to CLIENT from a third party without an obligation of confidentiality; or (iv) is independently developed by CLIENT without use of any Confidential Information. CLIENT will only use the Confidential Information to exercise its rights or carry out its obligations under the Agreement and will protect the Confidential Information by using the same degree of care as it uses to safeguard its own confidential or proprietary information of a like nature from unauthorized use, disclosure, or dissemination, but no less than a reasonable degree of care. CLIENT will restrict access to Confidential Information to only its employees or Consultants or affiliated organizations who require such access in the course of their assigned duties and responsibilities and who have been informed of CLIENT's obligations of confidence and have agreed in writing to preserve the confidentiality of such information under terms and conditions no less restrictive than those set forth herein, provided that in the case of CLIENT, CLIENT may not permit a Consultant which is a competitor of crmOrbit to access Confidential Information of crmOrbit without the express written approval of crmOrbit except as otherwise provided for in an executed Statement of Work or Exhibit to this agreement. In the event that any Confidential Information is required to be disclosed pursuant to any law (including the California Public Records Act), code or regulation, if permitted by law, CLIENT will give crmOrbit

immediate notice thereof and will use its commercially reasonable efforts to cooperate with crmOrbit if crmOrbit seeks a protective order with respect thereto.

7. Warranty.

7.1 Exclusive Warranty. crmOrbit warrants that the EO Service will perform in all material respects the functions described in the then current product documentation for the EO Service. If the EO Service fails to operate as warranted in this Section 7.1 and CLIENT notifies crmOrbit in writing of the nature of the non-conformance ("Notice"), crmOrbit will make commercially reasonable efforts to promptly repair or replace the nonconforming EO Service without charge. If, after a reasonable opportunity to cure of no less than 45 days, crmOrbit does not remedy the non-conformance, CLIENT may no later than ninety (90) days after giving the Notice terminate the Agreement and receive a refund of the prepaid EO Service fees for the period following the date of Notice.

7.2 Warranty Disclaimer. Except for the warranties expressly described in these Terms of Use, crmOrbit makes no other warranties with respect to the EO Service or other services provided by crmOrbit, express, implied or statutory, and disclaims any implied warranties of merchantability, fitness for a particular purpose or any warranty arising from course of dealing, usage or trade practice. crmOrbit does not warrant that the EO Service and the CLIENT Data stored through the use of the EO Services are not susceptible to intrusion, attack or computer virus infection.

8. Limitation of Liability.

Except for damages related to negligent breach of Confidentiality, neither Party's aggregate liability under this Agreement for any claim arising under or relating the Agreement, the EO Application Services or any other services provided by crmOrbit under any theory of liability including contract, strict liability, indemnity, tort (including negligence) or otherwise, will not exceed the fees due to crmOrbit up until the date of termination. In no circumstances will either party be liable for any special, indirect, cost of cover, incidental, exemplary, punitive, or consequential damages, such as, but not limited to, loss of revenues.

CLIENT acknowledges that CLIENT Data will be transmitted outside of the EO Service and SFDC's system and to that extent; neither SFDC nor crmOrbit are responsible for the privacy, security or integrity of the CLIENT Data. The EO Services is subject to any limitations, delays, and other problems with the SFDC Service and those inherent in the use of the Internet and electronic communications. crmOrbit is not responsible for any delays, delivery failures, or other damage resulting from the foregoing.

9. **Term and Termination.** The initial term of the Agreement is the period as specified in Addendum(s) attached to this Agreement. Subject to any applicable volume discounts, the EO Service Fees for any Renewal Term may be annually increased no greater

than 3.5% and shall be invoiced on the same schedule as in effect for the billing period immediately prior to the expiration of the Initial Term. This agreement shall automatically renew with same terms unless terminated by one of the parties. CLIENT shall solicit renewal terms and pricing. Only an executed copy of CLIENT's Purchase Order and mutually agreed endorsed agreements constitute renewal of this agreement. crmOrbit may terminate the Agreement by written notice if CLIENT commits a material breach of the Agreement, which breach is not cured within forty-five (45) days of written notice thereof. In the event of a breach by crmOrbit of its obligations hereunder which breach is not cured within forty five (45) days of written notice thereof, CLIENT may terminate that portion of the Agreement applicable to the EO Service or other service by written notice to crmOrbit. Upon termination of the Agreement or termination of the EO Service or other crmOrbit services, as the case may be, crmOrbit shall immediately cease providing any such EO Service or other services.

9.1 License Cancellation for Change in Business Conditions. Notwithstanding Section 4.3, CLIENT may cancel a License subscription associated with a particular Statement of Work upon 30 days written notice to crmOrbit in the event that:

9.1.1 Client provides written notice that the energyOrbit solution is unable to support regulatory reporting requirements, provides details on what is needed to support changed regulatory reporting requirements, and crmOrbit is unable to make changes to conform to new requirements within 45 days of notice.

9.1.2 License cancellation under this section is subject to the following:

9.1.2.1 All license fees and payment obligations due for the first two (2) years of the contract shall be due and payable according to the terms of the applicable SOW, even if cancellation is prior to this date.

9.1.2.2 Upon License cancellation under this section, Client agrees to pay a one-time penalty equal to 35% of the annual total license and user fees, as well as any fees accrued to date based upon the contract and associated Statements of Work. Effective Cancellation Date will be upon receipt of these fees.

9.1.2.3 Except as noted in Sections 9.1.4.1 and 9.4.1.2 above, upon Effective Cancellation Date, license fees for the Cancelled SOW shall cease to accrue, and future payment obligations for this SOW shall be cancelled.

9.1.2.4 crmOrbit shall be relieved of any obligations for support and maintenance of energyOrbit with respect to cancelled licenses as of the Effective Cancellation Date.

- 9.1.2.5 CLIENT may export data from the energyOrbit solution using standard report features and a weekly full data export feature which is part of the Force.com platform. Once cancellation fees are received, energyOrbit will provide up to 40 hours of assistance to transfer data out of the energyOrbit environment. CLIENT may engage crmOrbit on a time and materials or fixed fee basis to assist with additional data migration to support a system transition through execution of a Statement of Work or Change Order to this Agreement.
- 9.1.2.6 Other than relief of obligations as provided in this section, surviving provisions of this Agreement and non-cancelled Statements of Work shall remain in force.

10. Publicity.

crmOrbit may identify CLIENT as a customer of crmOrbit. Each party may issue a press release announcing the relationship formed by the Agreement, subject to the prior approval of the other party, not to be unreasonably withheld or delayed.

11. Exceptions.

11.1 EO Service Exclusions. Notwithstanding anything to the contrary in this Agreement, crmOrbit will have no liability under this Agreement, with respect to: (i) customizations of the SFDC and/or EO Service by CLIENT, its Users or Consultants, (ii) use of the EO Services in violation of this Agreement or other than in accordance with the published user documentation; (iii) failures which are caused by other software or hardware products including the SFDC Services.

11.2 SFDC Service Changes. In addition, in the event SFDC (i) alters the SFDC Service in such a way as to materially adversely impact the operation of the EO Service, or (ii) no longer agrees to host the EO Service under the same terms and conditions as are currently in place, then crmOrbit may in its sole discretion restore the operation of the EO Service in a reasonable period of time or cease offering the EO Service. In the latter event, crmOrbit will refund the applicable prepaid EO Service fees for the period following the date the EO Service ceases to be interoperable with the SFDC Service or the EO Service ceases to be hosted by SFDC, as applicable. The remedies set forth in this Section are the sole remedies for a failure to provide the EO Service due to the foregoing reasons, and crmOrbit shall have no other obligation or liability with respect thereto.

12. Governing Law. This Agreement shall be governed exclusively by, and construed exclusively in accordance with, the laws of the United States and the State of California, without regard to its conflict of laws provisions.

13. Miscellaneous. The Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all previous agreements or

representations, whether oral or written. The Agreement may not be modified or amended except in writing signed by a duly authorized representative of each party. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect. The failure of either party to enforce at any time any of the provisions of this Agreement will in no way be construed to be a present or future waiver of such provisions, nor in any way affect the right of either party to enforce each such provision thereafter. The express waiver by either party of any provision of this Agreement will not constitute a waiver of any future obligation to comply with such provision. The Agreement will be construed and governed in accordance with the laws of the state of California, without reference to the conflict of laws provisions of any jurisdiction. Unless otherwise elected by crmOrbit in writing for a particular instance (which crmOrbit may do at its option), the sole jurisdiction and venue for actions related to the subject matter of this Agreement will be in the County of Placer, California.

14. **Venue.** The state and federal courts located in or covering Placer County in California shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each party hereby consents to the jurisdiction of such courts and waives any right it may otherwise have to challenge the appropriateness of such forums, whether on the basis of the inconvenient forum doctrine or otherwise.
15. **Arbitration.** Any dispute arising out of or relating to this Agreement other than a dispute requiring urgent relief shall be resolved solely by final and binding arbitration as follows. Unless the parties otherwise agree in writing, the arbitration shall be conducted in Placer County California before a single arbitrator. The arbitrator shall have relevant knowledge and/or experience in Internet-based online services and shall be jointly selected and mutually approved by the parties or, if the parties are unable to agree, shall be appointed by the American Arbitration Association ("AAA"). The arbitration shall be conducted in accordance with the AAA's then current commercial arbitration rules. The parties initially shall share equally the fees and expenses of the arbitration. However, the arbitrator may award the prevailing party (if applicable and as determined by the arbitrator) all such fees and expenses (including without limitation reasonable attorneys' fees) and the arbitrator should award such fees and expenses if he or she determines that the party acted unreasonably or other than in good faith. Any arbitration decision so rendered shall be final and binding, and judgment thereon may be entered in any court of competent jurisdiction.
16. **Notices.** Both parties consent to the jurisdiction of such courts with respect to any such actions and agree that process may be served in the manner provided herein for giving of notices or otherwise as allowed by California law. If any action is brought by either party to the Agreement against the other regarding the subject matter hereof, the substantially prevailing party will be entitled to recover reasonable attorney fees

and reasonable expenses of litigation. Notices under the Agreement shall be in writing, signed and provided to the contact and address indicated in the Agreement provided, that a party may change such contact or address by written notice to the other party. Notice will be considered effective on the earlier of actual receipt or: (a) one (1) day after posting when sent via an express commercial courier; or (b) five (5) days after posting when sent via certified mail, return receipt requested. Notice will be sent to the address for each party set forth on the first page of this Agreement, or at such other address as will be given by either party to the other in writing. Notices to crmOrbit will be addressed to the attention of: CEO. Failure to perform hereunder shall be excused to the extent that performance is rendered impossible by act of war, terrorism, strike, fire, flood, governmental acts or orders or restrictions or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing party. This Agreement (including SOWs, and Addendums) may be executed in counterparts which, taken together, shall form one legal instrument. Any executed copy of the Agreement made by reliable means (e.g., photocopy, scan, or facsimile) is considered an original.

END OF EXHIBIT A-1

EXHIBIT B

PERCENTAGE SHARE (PARTICIPATION PERCENTAGES)

Contracting Members are responsible for paying the following share of all invoices provided to NCPA by crmOrbit, under this Agreement:

| Organization | Share of Implementation Costs (Percent) | Share of Annual Licensing Costs (Percent) |
|---------------------------|---|---|
| Contracting Member | | |
| Alameda | 21.07 | 20.53 |
| Biggs | 1.05 | 1.02 |
| Healdsburg | 4.22 | 4.11 |
| Lodi | 24.24 | 23.62 |
| Lompoc | 6.50 | 6.34 |
| Plumas-Sierra | 8.63 | 8.41 |
| Truckee Donner | 18.47 | 18.00 |

EXHIBIT C

NCPA SUMMARIES OF LIABILITY INSURANCE

See the attached Summaries of the following insurance coverage:

1. Workers' Compensation & Employer's Liability
2. Automobile Liability & Physical Damage
3. Excess Liability
4. Professional Liability

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the northern california power agency

Workers Compensation and Employer's Liability Insurance Summary

| | |
|---|--|
| INSURED | Northern California Power Agency |
| COVERS | California Statutory Workers' Compensation & Employer's Liability |
| TERM | July 15, 2011-2012 |
| INSURER | Insurance Company of the State of Pennsylvania (Chartis member company) |
| POLICY NUMBER | WC 025889534 |
| ESTIMATED ANNUAL PREMIUM | <p>\$202,420 (includes \$16,105 for TRIA)</p> <p><u>\$ 11,197</u> California Taxes, Assessments Surcharges</p> <p>\$213,617</p> <p>Earned premium determined at audit at conclusion of policy term using actual July 1, 2011-2012 payroll and California rates on file at July 1, 2011.</p> <p>California taxes, assessments, surcharges subject to audited premium.</p> |
| LIMITS | <p>Statutory for Workers' Compensation</p> <p>Employer's Liability:</p> <p>\$1,000,000 Bodily Injury by Accident-Each Accident</p> <p>\$1,000,000 Bodily Injury by Disease-Policy Limit</p> <p>\$1,000,000 Bodily Injury by Disease-Each Employee</p> |



the northern california power agency

Automobile Liability & Physical Damage Insurance Summary

| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|---------------------------------|--|-------------|--|------------------------|-------------|--|---------------------|-------------|--|------------------------|---------------------------------|--|-----------------------|----------|--|---------------------------------|-------------|-------------|-----------------------------|-------------|-------------|---------------------------------|-----------|-------------|-----------------------------|-----------|-------------|------------------|-------------|--|----------------------|-------------|--|---------------|--------------------------------|--|-------------------|----------|--|-----------------------|-------------------|--|------------------------------|---|--|--|-------------------------------------|--|
| INSURED | Northern California Power Agency Northern California Municipal Power Corporation No. 2 and Northern California Municipal Power Corporation No. 3 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| COVERS | Automobile Liability & Physical Damage | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| TERM | December 1, 2011 to December 1, 2012 At 12:01 Standard Time | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| INSURER | The Hartford Fire Insurance Company | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| POLICY NUMBER | 57UEN TL0013 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| LIMITS OR AMOUNTS | <table><tr><td>Liability per accident</td><td>\$1,000,000</td><td></td></tr><tr><td>Uninsured Motorists</td><td>\$1,000,000</td><td></td></tr><tr><td>Underinsured Motorists</td><td colspan="2">Included in Uninsured Motorists</td></tr><tr><td>Auto Medical Payments</td><td>\$ 5,000</td><td></td></tr><tr><td>Physical Damage – Comprehensive</td><td>Not Covered</td><td>Owned Autos</td></tr><tr><td>Physical Damage – Collision</td><td>Not Covered</td><td>Owned Autos</td></tr><tr><td>Physical Damage – Comprehensive</td><td>\$ 25,000</td><td>Hired Autos</td></tr><tr><td>Physical Damage – Collision</td><td>\$ 25,000</td><td>Hired Autos</td></tr><tr><td>Towing and Labor</td><td colspan="2">Not Covered</td></tr><tr><td>Rental Reimbursement</td><td colspan="2">Not Covered</td></tr></table> <table><tr><td>Defense Cost:</td><td colspan="2">Paid in addition to the limits</td></tr><tr><td>Coverage Trigger:</td><td colspan="2">Accident</td></tr><tr><td>Liability Deductible:</td><td colspan="2">Each Accident Nil</td></tr></table> <table><tr><td>Physical Damage Deductibles:</td><td colspan="2">Physical Damage – Comprehensive \$1,000</td></tr><tr><td></td><td colspan="2">Physical Damage – Collision \$1,000</td></tr></table> | | | Liability per accident | \$1,000,000 | | Uninsured Motorists | \$1,000,000 | | Underinsured Motorists | Included in Uninsured Motorists | | Auto Medical Payments | \$ 5,000 | | Physical Damage – Comprehensive | Not Covered | Owned Autos | Physical Damage – Collision | Not Covered | Owned Autos | Physical Damage – Comprehensive | \$ 25,000 | Hired Autos | Physical Damage – Collision | \$ 25,000 | Hired Autos | Towing and Labor | Not Covered | | Rental Reimbursement | Not Covered | | Defense Cost: | Paid in addition to the limits | | Coverage Trigger: | Accident | | Liability Deductible: | Each Accident Nil | | Physical Damage Deductibles: | Physical Damage – Comprehensive \$1,000 | | | Physical Damage – Collision \$1,000 | |
| Liability per accident | \$1,000,000 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Uninsured Motorists | \$1,000,000 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Underinsured Motorists | Included in Uninsured Motorists | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Auto Medical Payments | \$ 5,000 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Physical Damage – Comprehensive | Not Covered | Owned Autos | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Physical Damage – Collision | Not Covered | Owned Autos | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Physical Damage – Comprehensive | \$ 25,000 | Hired Autos | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Physical Damage – Collision | \$ 25,000 | Hired Autos | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Towing and Labor | Not Covered | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Rental Reimbursement | Not Covered | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Defense Cost: | Paid in addition to the limits | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Coverage Trigger: | Accident | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Liability Deductible: | Each Accident Nil | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Physical Damage Deductibles: | Physical Damage – Comprehensive \$1,000 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Physical Damage – Collision \$1,000 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |



the northern california power agency

Excess Liability Insurance Summary

| | |
|-----------------------------|--|
| INSURED | Northern California Power Agency Northern California Municipal Power Corporation No. 2 and Northern California Municipal Power Corporation No. 3 |
| COVERS | Excess Liability Claims-First-Made Form |
| TERM | December 1, 2011 to December 1, 2012 At 12:01 Standard Time Retroactive Date: December 1, 1986 at 12:01am Standard Time at the address of the named insured Claims-First-Made Policy; Community Service Retroactive Date: December 1, 1998; Pending and Prior Date for EPLI: December 1, 1994 |
| INSURER | Associated Electric & Gas Insurance Services, Ltd. (AEGIS), Form 8100(3/2007) (Non Admitted Insurer) |
| POLICY NUMBER | X05055401P |
| LIMITS OR AMOUNT | A. Limit of liability each occurrence: 1. \$35,000,000* 2. \$70,000,000 General Aggregate B. Joint Venture Limit of Liability each occurrence: Per limit of Liability section percentage of insured interest in JV within total policy limits (not > \$35,000,000) C. Combined Products/Completed Operations Liability Aggregate Limit of Liability: \$35,000,000 D. Failure to Supply Liability Aggregate Limit of Liability: \$35,000,000 E. Pollution Liability Aggregate Limit of Liability: \$35,000,000 F. Incidental Medical Malpractice Injury Limit of Liability each occurrence: \$35,000,000 G. Wild Fire Liability Aggregate Limit of Liability for the Policy Period \$35,000,000 * Subject to the \$70,000,000 General Aggregate of the Policy |



the northern california power agency

Professional Liability Insurance Summary

| | |
|-----------------------------|---|
| INSURED | Northern California Power Agency |
| COVERS | Professional Liability Insurance Claims-First-Made Form |
| TERM | March 27, 2011 to March 27, 2012 At 12:01 Standard Time Retroactive Date: December 1, 2002 (Designated Activities) May 24, 2005 (Accountant's Liability) Claims-First-Made Policy |
| INSURER | Associated Electric & Gas Insurance Services, Ltd. (AEGIS) (Non Admitted Insurer) |
| POLICY NUMBER | E0352A1A11 |
| LIMITS OR AMOUNT | \$10,000,000 |
| DEDUCTIBLE | \$500,000 |
| PREMIUM | \$66,990 |

RESOLUTION NO. 2012-_____

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING
THE CITY MANAGER TO EXECUTE A CONSULTANT
SERVICES AGREEMENT WITH NORTHERN CALIFORNIA
POWER AGENCY REGARDING crmORBIT, INC., AND
ALLOCATE PUBLIC BENEFIT PROGRAM FUNDS

=====

WHEREAS, the Northern California Power Agency (NCPA) has executed an agreement with crmOrbit, Inc. to provide energy efficiency services for NCPA members; and

WHEREAS, it will allow residential customers to apply for their energy efficiency utility rebates via the utility's web site and create a database for reporting purposes; and

WHEREAS, this will streamline and expedite rebate processing for both the customer and City staff. In addition, this new database will serve as the platform for Lodi Electric Utility's annual state-required filing of energy savings achieved and rebate funds provided to the City's electric utility customer-owners; and

WHEREAS, the total cost of this service is \$105,000 and covers the ensuing five fiscal years; and

WHEREAS, staff requests that the City Council authorize the City Manager to execute a Consultant Services Agreement with NCPA, who will administer a contract with crmOrbit, Inc. for this new energy efficiency service and allocate funds for the current fiscal year in the amount of \$27,000.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute a Consultant Services Agreement with Northern California Power Agency regarding crmOrbit, Inc., and allocate \$27,000 in Public Benefit Program funds for the current fiscal year.

Dated: April 18, 2012

=====

I hereby certify that Resolution No. 2012-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held April 18, 2012, by the following vote:

AYES: COUNCIL MEMBERS –
NOES: COUNCIL MEMBERS –
ABSENT: COUNCIL MEMBERS –
ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk



CITY OF LODI COUNCIL COMMUNICATION

TM

AGENDA TITLE: Adopt Resolution Authorizing the City Manager to Allocate \$25,000 in Public Benefit Program Funds for a Research, Development and Demonstration Grant to Lodi Unified School District

MEETING DATE: April 18, 2012

PREPARED BY: Electric Utility Director

RECOMMENDED ACTION: Adopt a resolution authorizing the City Manager to allocate \$25,000 in Public Benefit Program funds for a research, development and demonstration grant to Lodi Unified School District.

BACKGROUND INFORMATION: For the 2011/2012 fiscal year, the City Council approved a total of \$50,000 in Public Benefit Program expenditures in the category of Research, Development and Demonstration (RD&D).

The Electric Utility Department seeks to issue a RD&D grant in the amount of \$25,000 to Lodi Unified School District (LUSD). The grant will assist LUSD in offsetting some of the costs incurred for a pilot project pursued at Lodi High School. Specifically, LUSD has purchased and installed 24 solar panels to power four rooftop-mounted heating and air conditioning units. This is a first-of-its-kind project in Lodi, demonstrating one of the many creative uses of solar energy, which is particularly important during the peak summer energy periods in our community.

FISCAL IMPACT: Electric utility revenues will decrease as a result of these HVAC units operating on solar-powered electricity. The estimated amount is \$2,000 annually.

FUNDING: Included in FY 2011/2012 Budget Account No. 164607

Jordan Ayers
Deputy City Manager/Internal Services Director

Elizabeth A. Kirkley
Electric Utility Director

PREPARED BY: Rob Lechner, Manager, Customer Service & Programs

EK/RSL/1st

APPROVED: _____
Konradt Bartlam, City Manager

RESOLUTION NO. 2012-_____

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING THE CITY MANAGER TO
ALLOCATE \$25,000 IN PUBLIC BENEFIT
PROGRAM FUNDS FOR A RESEARCH,
DEVELOPMENT AND DEMONSTRATION GRANT
TO LODI UNIFIED SCHOOL DISTRICT

=====

WHEREAS, the Lodi City Council has approved a total of \$50,000 in the 2011-2012 fiscal year Public Benefits Program budget for Research, Development and Demonstration (RD&D) projects; and

WHEREAS, Electric Utility staff has identified an eligible project for Lodi Unified School District for the purchase and installation of solar panels to power heating and air conditioning units at Lodi High School; and

WHEREAS, this RD&D project clearly demonstrates a creative use of solar energy by Lodi Unified School District.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to allocate \$25,000 in Public Benefit Program RD&D funds to Lodi Unified School District for their solar-powered heating and air conditioning unit pilot project at Lodi High School.

Dated: April 18, 2012

=====

I hereby certify that Resolution No. 2012-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held April 18, 2012, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

2012-_____



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Approving Application for Department of Boating and Waterways Grant

MEETING DATE: April 18, 2012

PREPARED BY: Parks, Recreation and Cultural Services Interim Director

RECOMMENDED ACTION: Adopt resolution approving application for Department of Boating and Waterways grant.

BACKGROUND INFORMATION: The Lodi Lake boat ramp, located on the north shore of the lake to the west of Parson's Point, is in poor condition, and parking and related facilities are inadequate and poorly designed. This resolution authorizes the application for a grant seeking \$707,238 from the California Department of Boating and Waterways, without the requirement of a City match, to replace and expand those facilities. On April 3, 2012, the Recreation Commission voted unanimously to recommend the City Council support the application.

The plan would improve vehicle circulation, decreasing the time needed to launch and remove boats, provide additional boat trailer parking and general parking overall, and a new dock. Lack of parking today results in boaters being turned away from the park. The design and cost estimates were prepared by the Department of Boating and Waterways in consultation with Parks, Recreation and Cultural Services Department staff. A photo of the ramp and a copy of the proposed design are attached.

While there would be a loss of some turf areas on the west edge of the existing parking lot, those are areas that are on the park fringe and receive little use. The improvements planned for the south shore driveway and parking areas will result in increased turf areas in the park's most heavily used areas.

If the project receives funding, construction for below-water facilities would likely begin in December 2014 or January 2015, in coordination with the Woodbridge Irrigation District. Parking area improvements would be scheduled during the spring or summer of 2015.

FISCAL IMPACT: Applying for the grant does not have fiscal impacts. A grant-funded project would result in increased launch revenue and reduced maintenance.

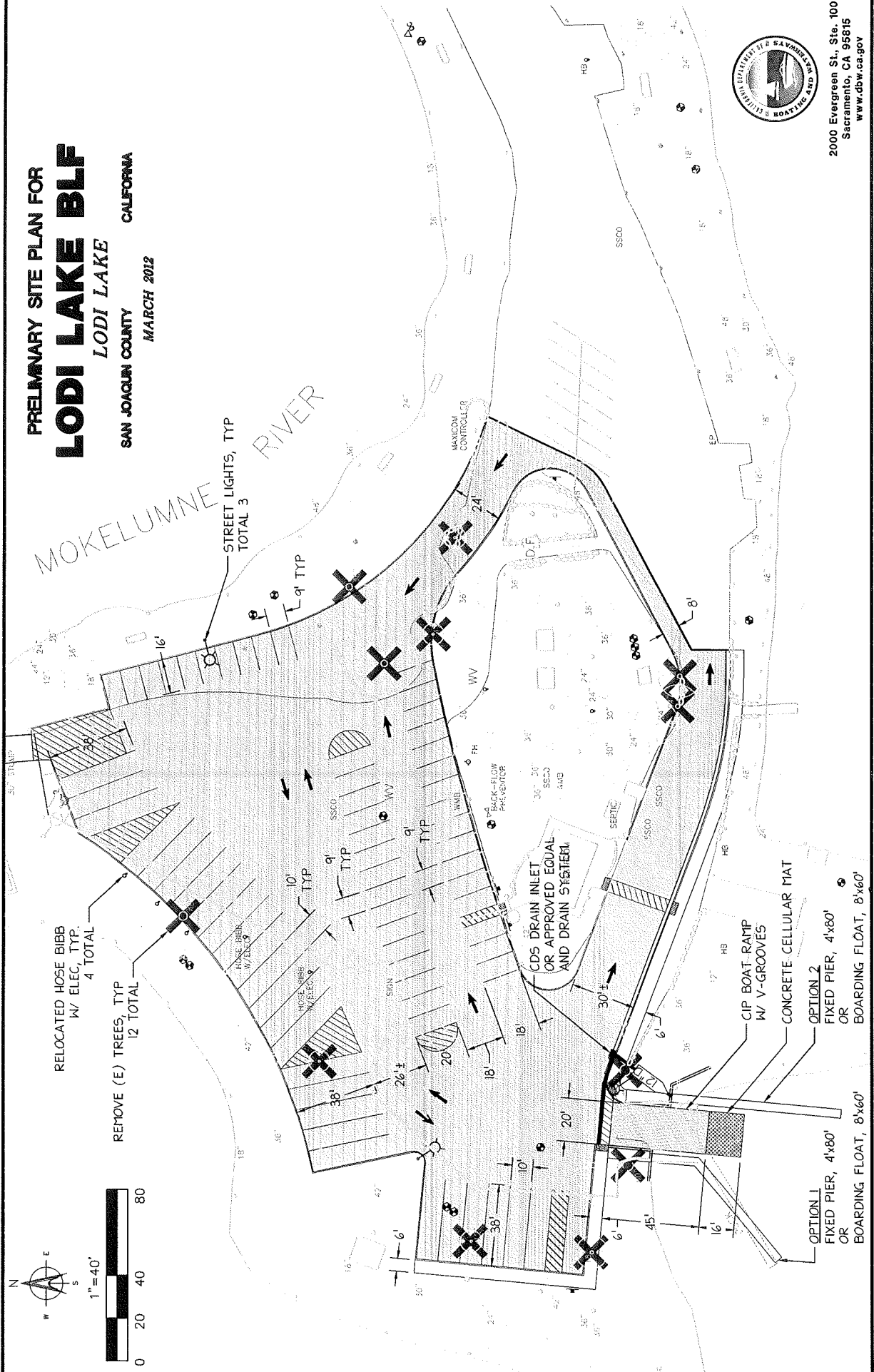
FUNDING AVAILABLE: Not applicable.

JEFF HOOD
Interim Director
Parks, Recreation and Cultural Services Department

Attachments: Resolution, photo, site plan

APPROVED: _____
Konradt Bartlam, City Manager

**PRELIMINARY SITE PLAN FOR
LODI LAKE BLF
LODI LAKE
SAN JOAQUIN COUNTY CALIFORNIA
MARCH 2012**



2000 Evergreen St., Ste. 100
Sacramento, CA 95815
www.dbw.ca.gov



RESOLUTION NO. 2012-_____

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING A GRANT APPLICATION WITH THE STATE
OF CALIFORNIA DEPARTMENT OF BOATING AND
WATERWAYS

=====

WHEREAS, the City of Lodi, a municipal corporation, has the authority to construct, operate, and maintain the Lodi Lake Boat Launch Facility; and

WHEREAS, the City of Lodi, a municipal corporation, is requesting a \$707,238 grant from the Department of Boating and Waterways; and

WHEREAS, the City of Lodi, a municipal corporation, desires to enhance, repair, or rebuild and protect the Lodi Lake Boat Launch Facility to meet the needs of watercraft users and provide other public amenities to those utilizing the facility.

WHEREAS, staff recommends pursuant and subject to all of the terms and provisions of the Harbor and Watercraft Revolving Fund program, application be made to the State of California, Department of Boating and Waterways for funding.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize a grant application with the State of California Department of Boating and Waterways; and

BE IT FURTHER RESOLVED that the Parks, Recreation and Cultural Services Department Interim Director of said City of Lodi, a municipal corporation, is hereby authorized and directed to cause the necessary data to be prepared and application to be signed and filed with the State of California Department of Boating and Waterways.

Dated: April 18, 2012

=====

I hereby certify that Resolution No. 2012-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held April 18, 2012 by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Receive Report Regarding League of California Cities Communications Pertaining to Assembly Bill 1627 and Senate Bill 1498

MEETING DATE: April 18, 2012

PREPARED BY: City Clerk

RECOMMENDED ACTION: Receive report regarding League of California Cities (League) communications pertaining to Assembly Bill 1627 and Senate Bill 1498.

BACKGROUND INFORMATION: The City received a request for communication from the League pertaining to AB 1627 and SB 1498. A letter of opposition to AB 1627 and letter of support for SB 1498, signed by the Mayor, were sent out immediately as the bills were being heard in committee shortly.

With respect to AB 1627, the State Energy Resources Conservation and Development Commission currently prescribes, by regulation, building design and construction standards and energy and water conservation design standards for new residential and nonresidential buildings. The commission is required to certify an energy conservation manual for use by designers, builders, and contractors of residential and nonresidential buildings. The bill would prohibit a local building department from issuing a building permit for a residential or nonresidential building unless the department confirms that the building plan complies with those standards.

SB 1498 would allow a local agency formation commission to authorize a city or district to provide new or existing services outside its jurisdictional boundaries and outside its sphere of influence to support existing or planned uses involving public or private properties, subject to approval at a noticed public hearing, in which certain determinations are made. The bill would also authorize the commission to delegate to its executive officer the approval of certain requests to authorize a city or district to provide new or extended services outside its jurisdictional boundaries or outside its sphere of influence under specified circumstances.

The above-referenced letters were sent as requested on April 5, 2012 and this report is provided for informational purposes only.

FISCAL IMPACT: None.

FUNDING AVAILABLE: Not applicable.

Randi Johl
City Clerk

APPROVED: _____
Konradt Bartlam, City Manager

Randi Johl

From: Randi Johl
Sent: Wednesday, April 04, 2012 09:12 AM
To: Randi Johl
Subject: FW: URGENT: LETTERS AND CALLS NEEDED

Attachments: AB1585Perez-SampleSupport-PublicSafetyFocus.rtf; AB 1585 FACT SHEET.docx; AB 1627 Sample Oppose Letter.doc; AB 1627 Fact Sheet 032812.docx; AB 1627 Talking Points 032812.docx; SB 1498 Sample Support Letter.doc; SB 1498 Fact Sheet 032712.docx; SB 1498 Talking Points 032712.docx



AB1585Perez-Samp... AB 1585 FACT... AB 1627 Sample... AB 1627 Fact Sheet... AB 1627 Talking... SB 1498 Sample... SB 1498 Fact Sheet...
eSupport-Publ... iHEET.docx (39 KB.. Oppose Letter.d... 032812.docx... Points 032812.... Support Letter.... 032712.docx...



SB 1498 Talking
Points 032712....

-----Original Message-----

From: Stephen R. Qualls [mailto:squalls@cacities.org]
Sent: Wed 3/28/2012 5:01 PM

To: Rod Butler (rbutler@ci.patterson.ca.us); Bryan Whitemyer; Sheila Cumberland (Sheila.Cumberland@ci.ceres.ca.us); Bismarck Obando; Mike Locke (Mike.Locke@stocktongov.com); Mitzi Ortiz (mortiz@ci.lathrop.ca.us); Mark Lewis (mlewis@ci.chowchilla.ca.us); Steve Williams (swilliams@turlock.ca.us); Sean Scully; Kathy Kilver (Citymanager@atwater.org); Frank Quintero (quinterof@cityofmerced.org); Christian.Clegg@stocktongov.com; citymanager@livingstoncity.com; Jose Antonio Ramirez (jramirez@livingstoncity.com); Michael McHatten (michaelmchatten@angelscamp.gov); Greg Wellmann (gwellman@ci.oakdale.ca.us); Cindy Black (cblack@ci.chowchilla.ca.us); janderson@riverbank.org; Mary Hemminger; Odi Ortiz; mholland@cityofnewman.com; kmclaughlin@ci.manteca.ca.us; jhall@cityofripon.org; maria.hurtado@ci.tracy.ca.us; Kathy Espinoza; Joann Tilton; directordebby@manteca.org; Linda Abid - Cummings; rchurchilljr@comcast.net; walker@cityofmerced.org; JoAnne Mounce; Stephanie Lopez; gnyhoff@modestogov.com; Davidson, Dana; jfaul@atwater.org; Cindy Heidorn; Randi Johl; Connie Cochran (connie.cochran@stocktongov.com); Mary Kelly; Florence Low (Florence.Low@stocktongov.com); Elbert Holman (Elbert.holman@stocktongov.com); bramlej@cityofmerced.org; Kellie Weaver; Jordan Ayers; Ann Johnston (mayor@stocktongov.com); ckeaten@ci.lathrop.ca.us; Susan Lake; dist2@ci.stockton.ca.us; rwasden@turlock.ca.us; Gary Dickson (Gary.Dickson@stocktongov.com); Jeff Hood; Joe Maestretti (joe.maestretti@stocktongov.com); dwilliams-ridley@modestogov.com; cityclerk@hughson.org; Rad Bartlam; Tim Ogden (togden@cityofwaterford.org); Bob Deis (bob.deis@stocktongov.com); hhesling@cityofescalon.org; Bcota@livingstoncity.com; tmiller@mlode.com; tfoley@modestogov.com; mhernandez@riverbank.org; jridenour@modestogov.com; city@dospalos.org; lcompton@cityofripon.org; ggreeson@cityofgustine.com; admin@cityofwaterford.org; adewerk@ci.ceres.ca.us; citymanager@ci.lathrop.ca.us; citymgr@losbanos.org; diperez@modestogov.com; gcarrington@atwater.org; Kathy.Miller@ci.stockton.ca.us; tmiller@sonoraca.com
Subject: URGENT: LETTERS AND CALLS NEEDED

Please have your Mayor or Council send letters supporting AB 1585 and SB 1498 as well as a letter opposing AB 1627. Please also have them make contact with their legislator urging their legislator to support your city's position.

In brief, AB 1585 is clean up language for AB 1x 26.
Among other things, AB 1585 provides the follow reliefs:
Preserves affordable housing funding.
Ensures loan repayments to help provide local services.
Preserves asset value and avoids potential "fire sale" phenomenon.

SB 1498 aims to address the unnecessary complexities of annexation as presented in 2011's SB 244. And
AB 1627 imposes an overbearing state regulatory framework on city efforts to comply with SB 375. You can find more information in the fact sheets that I have provided.

Text of the bills can be found on the League website cacities.org.

I have attached sample letters as well as talking points.

Please let me know when the letters are sent and any feedback that is received when your legislator is contacted.

Thank you,
Stephen Qualls
Central Valley Regional Public Affairs Manager
League of California Cities

209-614-0118
Fax 209-883-0653
squalls@cacities.org<<mailto:squalls@cacities.org>>

To expand and protect local control for cities through education and advocacy in order to enhance the quality of life for all Californians.

PLEASE DO NOT distribute political campaign advocacy information from public (city hall) computers, on city time, or using public resources, even if it's from your personal email account. If in doubt, check with your city attorney.??

DisclaimerPlease Note: Please take the following precautions if this email is about a CITIPAC event. Though it is not illegal for you to receive this notice via a city e-mail address, you should not respond to it or forward it using public resources. You may however forward this message to your non-public e-mail account for distribution on non-public time. If you have questions about the event or need additional information, please contact Mike Egan at (916) 658-8271 or egan@cacities.org

AB 1627 (Dickinson): Imposing Costly Mandates and State Micromanagement on Local Sustainable Development

FACT SHEET

AB 1627 imposes an overbearing state regulatory framework on city efforts to comply with SB 375. This bill would prohibit local governments from issuing local building permits until the building has satisfied standards being developed by the California Energy Commission (CEC) designed to reduce vehicle miles traveled by occupants of residential and nonresidential buildings. Stakeholders, like the League of California Cities, businesses and local government organizations carefully negotiated agreements in order to support the final version of SB 375. Critical to that agreement was the framework whereby the California Air Resources Board (CARB) established a greenhouse gas reduction target for each region. The micromanagement by the state, as presented in AB 1627, is exactly what was specifically excluded from SB 375 so that cities could make planning choices based on the intricacies of their individual communities. Furthermore, one cannot guarantee a reduction in vehicle miles traveled (VMT) making the environmental goal in AB 1627 uncertain.

AB 1627 adds mandates while local government tools have been depleted.

Redevelopment was the most powerful tool the state had to promote transit-oriented development, and renovate urban cores. With the devastating loss of redevelopment, local agencies have virtually no tools left to resolve the challenges of infill: cleaning up brownfields; small lot assembly; upgrading sewer, water and other infrastructure to support high-density development; providing affordable housing; and other issues. Saddling these communities with costly mandates at this time is ill considered and will not achieve desired outcomes.

AB 1627 restricts economic growth at a time when California should be encouraging economic development and job creation. Local agencies will be prohibited from issuing a building permit until the agency can confirm that the project meets the minimum VMT standards set by the CEC. Overly restrictive and intrusive requirements imposed on new units and their occupants will further exacerbate California's economy by making new construction in the state less marketable and desirable. Furthermore, for those that are not fortunate enough to already own a home, this bill will unfairly impact their future opportunities to purchase or rent housing by dramatically increasing the costs. AB 1627 does not consider the increased costs to the building industry as a result of the mandates of the CEC, or the burden of paying local governments to hire staff to confirm that the development meets the CEC standards.



SB 1498 – Encourages Responsible, Financially Sustainable Community Support and Growth

FACT SHEET

SB 1498 aims to address the unnecessary complexities of annexation as presented in 2011's SB 244.

Given the complicated nature of what came out of SB 244 and last year's VLF revenue take through SB 89, cities lack the incentives that are critical to responsible community development through annexation. Requiring a city to update its general plan to be inclusive of disadvantaged communities that are within its sphere of influence encroaches on the feasibility of annexing at all by demanding more financial resources to accommodate the populations. Furthermore, SB 244 requires the local agency formation commission (LAFCO) to deny any application by a city to annex a territory that is contiguous to a disadvantaged community unless a second application is submitted for the disadvantaged community. SB 1498 removes the dual application requirement.

SB 244 aimed to provide services to disadvantaged communities, but actually created disincentives to do so.

While we understand the intentions of SB 244 (Wolk), signed by Governor Brown last year, to provide essential municipal services to disadvantaged communities, the bill actually creates disincentives for cities considering annexation and therefore will neglect disadvantaged communities. SB 1498 aims to relieve cities of some of the burdensome policies recently put into place by SB 244 that now serve as a deterrent to annexing land.

SB 1498 will allow disadvantaged communities to have access to essential municipal services.

SB 1498 allows cities to provide much needed services to disadvantaged communities without the requirement to annex territory. This measure would strike a balance by allowing LAFCOs to approve the extension of services *beyond* an agency's sphere of influence that would limit "sprawl" but still provide services to existing residents in disadvantaged communities.

Without SB 1498, annexed lands will be at risk.

Requiring a city to annex a disadvantaged community when seeking to annex nearby territory places both annexations at risk. After the passage of SB 89 last year, cities will have little to no resources to support services.

CITY COUNCIL

JOANNE MOUNCE, Mayor
ALAN NAKANISHI,
Mayor Pro Tempore
LARRY D. HANSEN
BOB JOHNSON
PHIL KATZAKIAN

CITY OF LODI

CITY HALL, 221 WEST PINE STREET
P.O. BOX 3006
LODI, CALIFORNIA 95241-1910
(209) 333-6702 / FAX (209) 333-6807
www.lodi.gov cityclerk@lodi.gov

KONRADT BARTLAM,
City Manager

RANDI JOHL, City Clerk

D. STEPHEN SCHWABAUER
City Attorney

April 4, 2012

The Honorable Roger Dickinson
California State Assembly
State Capitol Building, Room 3126
Sacramento, California 95814

Via Facsimile: (916) 319-2109

**SUBJECT: AB 1627 - BUILDING PROHIBITIONS / BUILDING STANDARDS
NOTICE OF OPPOSITION**

Dear Assembly Member Dickinson:

The City of Lodi regrets to inform you of our opposition to AB 1627. This bill would prohibit local governments from issuing local building permits until the building has satisfied standards being developed by California Energy Commission (CEC) designed to reduce vehicle miles traveled (VMT) by occupants of residential and nonresidential buildings.

The City of Lodi has concerns with the following aspects of AB 1627:

- **The intent of AB 1627 unravels carefully negotiated SB 375 agreements and micromanages solutions.** Stakeholders, like the League of California Cities, businesses and local government organizations carefully negotiated agreements in order to support the final version of SB 375. Critical to that agreement was the framework whereby the California Air Resources Board (CARB) established a greenhouse gas reduction target for each region. After CARB confirms that a plan will achieve its target, regions and their local governments are provided complete flexibility to craft local approaches and strategies that would achieve the target. State micromanagement was specifically excluded from the measure. The stated intent of AB 1627 is to "ensure that the promise of SB 375 is realized." By attempting to impose an overbearing state regulatory framework on all new development, this measure undermines that delicate balance.
- **Adds mandates while local government tools have been depleted:** Redevelopment was the most powerful tool the state had to promote affordable housing, transit-oriented development, and renovate urban cores. With the devastating loss of redevelopment, local agencies have virtually no tools left to resolve the challenges of infill: cleaning up brownfields; small lot assembly;

upgrading sewer, water and other infrastructure to support high-density development; providing affordable housing; and other issues. Saddling these communities with costly mandates at this time is ill considered and will not achieve desired outcomes.

- **Restricting economic growth:** Local agencies will be prohibited from issuing a building permit until the agency can confirm that the project meets the minimum VMT standards set by the CEC. Overly restrictive and intrusive requirements imposed on new units and their occupants will further exacerbate California's economy by making new construction in the state less marketable and desirable.
- **Costs imposed on individuals not a factor:** In previous regulatory efforts the CEC was charged with balancing the cost of a new energy efficiency standard against the lifecycle cost imposed on the individual. That is not the case for AB 1627. AB 1627 requires the CEC to determine the feasibility and attainability of the standards based on the economic, social and environmental costs for the "state as a whole" not the costs to individuals or businesses that may be particularly detrimentally impacted by the requirements.

For these reasons, the City of Lodi opposes AB 1627.

Sincerely,

JoAnne Mounce
Mayor

C: Joanna Gin, Business, Professions and Consumer Protection Committee
(916-319-3739)
Ted Blanchard, Business, Professions and Consumer Protection Committee
(916-319-3902)
Kirstin Kolpitzke, League of California Cities (916-658-8240)
Stephen Qualls, League of California Cities

CITY COUNCIL

JOANNE MOUNCE, Mayor
ALAN NAKANISHI,
Mayor Pro Tempore
LARRY D. HANSEN
BOB JOHNSON
PHIL KATZAKIAN

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KONRADT BARTLAM,
City Manager

RANDI JOHL, City Clerk

D. STEPHEN SCHWABAUER
City Attorney

April 4, 2012

The Honorable Tom Berryhill
California State Senate
State Capitol Building, Room 3076
Sacramento, California 95814

Via Facsimile: (916-327-3523)

**SUBJECT: SB 1498 (EMMERSON). LOCAL AGENCY FORMATION COMMISSION:
POWERS. NOTICE OF SUPPORT**

Dear Senator Berryhill:

The City of Lodi is pleased to support SB 1498 (Emmerson), which would allow local agencies to provide much needed services to disadvantaged communities without the requirement to annex territory.

Requiring cities to annex a disadvantaged community when seeking to annex nearby territory places both annexations at risk. Last year, cities lost \$130 million in city general fund dollars under SB 89. In the past, a share of this money went to cities that annexed inhabited territories based on the number of inhabitants in the territory. This bump in revenue went towards the enormous costs of providing services to a newly annexed territory. The loss of this revenue means that there is even less of an incentive for cities to expand their boundaries.

SB 1498 would give local governments an alternative to annexing territory by authorizing an extension of services. This additional tool would provide disadvantaged communities an opportunity to benefit from services that they have not received in unincorporated territories, while at the same time give communities the autonomy to avoid the restrictions of city life. This measure strikes a balance between the undue burdens cities face when annexing territories and addressing service deficiencies in disadvantaged communities.

SB 1498 would remove the barriers to annexations, while at the same time authorizing LAFCOs to approve the extension of services beyond an agency's sphere of influence provided that the LAFCO makes specific findings. The bill is designed to address the problem of disadvantaged communities, in a more surgical manner.

For these reasons, the City of Lodi supports SB 1498.

Sincerely,

JoAnne Mounce
Mayor

C: The Honorable Senator Bill Emmerson (916-327-2187)
 Kirstin Kolpitke, League of California Cities (916-658-8240)
 Stephen Qualls, League of California Cities
 Governor Jerry Brown (916-558-3177)



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Approving Lodi Professional Firefighters Memorandum of Understanding for the period January 1, 2012 through November 30, 2013

MEETING DATE: April 18, 2012

PREPARED BY: Human Resources Manager
Deputy City Attorney

RECOMMENDED ACTION: Adopt Resolution approving Lodi Professional Firefighters Memorandum of Understanding for the period January 1, 2012 through November 30, 2013.

BACKGROUND INFORMATION: The Memorandum of Understanding between the City of Lodi and the Lodi Professional Firefighters (LPF) expired on December 31, 2011. The principle components of the Memorandum of Understanding (as included in the attached tentative agreement, Exhibit A) are as follows:

- The terms and conditions of this statement of benefits shall be from January 1, 2012 through November 30, 2013.
- Beginning July 1, 2012 through December 31, 2013 employees agree to pay 5.3 percent share of their retirement costs. Beginning January 1, 2014 employees agree to pay the full 9 percent retirement costs.
- The LPF and the City agree to cap employees City paid medical insurance at the following rates effective January 1, 2013: single - \$610.44, employee plus one - \$1220.88, employee plus family - \$1587.14.
- The City will eliminate the employee co-pay for medical insurance (currently \$80 and \$104 for employee + 1 and family coverage, respectively).
- The Lodi Professional Firefighters group and the City agree to reopen the MOU to negotiate a Cafeteria Plan.
- The Emergency Medical Technician incentive shall be incorporated into salary and the incentive shall be eliminated.
- The City agrees to increase the uniform allowance from \$800 per year to \$950 per year.
- The City will restore the 3 percent City match to Deferred Compensation effective June 25, 2012.

FISCAL IMPACT: It is estimated that the provisions of this Memorandum of Understanding will save the City \$407,000 over the term of the agreement.

APPROVED: _____
Konradt Bartlam, City Manager

FUNDING AVAILABLE: Necessary funding will be included in each fiscal year budget.

Jordan Ayers, Deputy City Manager/Internal Services Director

Dean Gualco, Human Resources Manager

Attachments

RESOLUTION NO. 2012-_____

A RESOLUTION OF THE LODI CITY COUNCIL
APPROVING LODI PROFESSIONAL
FIREFIGHTERS MEMORANDUM OF
UNDERSTANDING

=====

WHEREAS, representatives from the City of Lodi and the Lodi Professional Firefighters Organization have bargained in good faith for the purpose of amending certain articles of the Memorandum of Understanding.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the attached Memorandum of Understanding (Exhibit A) between the City of Lodi and the Lodi Professional Firefighters Organization; and

BE IT FURTHER RESOLVED that said Memorandum of Understanding shall be effective for the period of January 1, 2012 through November 30, 2013.

Dated: April 18, 2012

=====

I hereby certify that Resolution No. 2012-_____ as passed and adopted by the City Council of the City of Lodi in a regular meeting held April 18, 2012, by the following votes:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

2012-_____

MEMORANDUM OF UNDERSTANDING

CITY OF LODI

AND

LODI PROFESSIONAL FIREFIGHTERS

January 1, 2012 – November 30, 2013

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Schedule A – Salary Schedule Effective 4/18/2012

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Chapter 1. Salaries and Other Compensation

ARTICLE I - ABOVE CLASS PAY

- 1.1 All employees in this bargaining unit who are required to work in a higher class shall be paid an additional 5% of the employee's salary for all hours once 12 consecutive hours have been worked.

ARTICLE II – DEPARTMENT SANCTIONED TEAMS

- 2.1 It is the intent of the City to develop specialized teams to address a variety of special hazards and provide specialized services to the department or community. When a team is established, minimum standards for inclusion and retention as a team member shall be developed and ratified by the Fire Chief. Any member of the department who becomes a member of the recognized specialized team, shall receive a 2.5% salary increase for as long as he/she meets the minimum entry level requirements and maintains a minimum level of participation as outlined in the team membership requirements. Each employee of the department can only receive 2.5% of salary for team membership, regardless of the number of teams the employee belongs to.
- 2.2 The development of new teams shall require the submittal of minimum entry level and performance criteria for maintenance of membership to the Fire Chief prior to the development of the team. The Fire Chief shall have the sole discretion as to the appropriate number of members per specialized team. The department shall make every effort to develop a cadre of specialized teams to adequately address the needs of its members.

ARTICLE III - EDUCATION INCENTIVE

- 3.1 An incentive program shall be established with the major purpose being to encourage and reward members of the LPF to broaden their on-the-job experience with academic training in the fields of science, management and administration.
- 3.2 Employees who meet the following criteria are eligible for education incentive pay.
- A. Employees holding an Associate of Arts shall receive \$25.00 per month if the:
1. AA is in Fire Science or related field or;
 2. AA is in a non-related field with a Fire Science Certificate from an accredited institution or;

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3. The employee possesses an AA degree and is actively pursuing a baccalaureate degree.

- B. Employees possessing a BA or BS degree shall receive an additional \$25.00 per month. If an employee possesses a BA degree, it is assumed that an AA is also possessed.

The incentives in Section 3.2A and Section 3.2B are limited to employees hired prior to April 18, 2012.

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- C. The following increments shall be added to the Education Incentive Program. It is agreed that the following amounts shall be paid if the individual has completed the necessary course work.

| | |
|---|-------------------|
| ◇ Certified Fire Officer----- | \$50.00 per month |
| ◇ Certified Chief Officer----- | \$50.00 per month |
| ◇ Certified Fire Investigator- Level 2----- | \$12.50 per month |
| ◇ Certified Fire Instructor Level 3 and Mgmt 2.E----- | \$25.00 per month |
| ◇ Certified Fire Prevention Officer Level 3 and Mgmt 2.E----- | \$25.00 per month |
| ◇ Certified Public Education Officer Level 2 ----- | \$12.50 per month |
| ◇ Certified Fire Chief----- | \$25.00 per month |

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-----3% of
base salary per month¶

The maximum amount to be paid under this program is \$175.00 per month.

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\$175.00 per month cap.

- 3.3 In addition to the amounts specified in Section 3.2, an additional \$25.00 per month shall be paid if the employee possesses a Hazardous Materials Specialist/ Technician certificate.

- 3.4 Persons possessing the aforementioned requirements shall not receive the incentive pay until such time as evidence of completion is produced. If they do possess the requirements on that date, but do not have evidence of completion, pay shall be made retroactively.

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ARTICLE IV – FLEXIBLE SPENDING ACCOUNT

- 4.1 The City shall include members of the LPF in the City's flexible spending account program, which allows employees to pay for unreimbursed medical costs, insurance premiums, and dependent care costs to be paid with pretax dollars.

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Article are limited to employees hired
prior to April 18, 2012.¶

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ARTICLE V - JURY DUTY

- 5.1 All full-time regular employees are granted jury duty leave with pay. Any employee who is summoned to attend any court during the time regularly required for his employment for the purpose of jury service shall be entitled, while so engaged and actually serving, to his regular compensation in addition to any jury duty compensation.

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- 5.2 No employee shall be granted jury duty leave with pay in which such employee will be testifying in behalf of oneself or as a witness in a court of law.
- 5.3 An employee serving on jury duty, who is not required to be in attendance at such jury duty for more than one half of the employee's normal working day is expected to return to his regular work assignment for the balance of the day. An employee seated on a jury shall not be scheduled for regular work during the twelve hours preceding the scheduled time for jury duty.
- 5.4 If an employee covered by this Agreement is required by subpoena to appear in court or to give a deposition as a result of an action taken within the scope of employment with the City, that employee shall receive his full pay while so doing, with no loss of time if he/she is on regular duty. If the employee is not on duty, the City agrees to compensate that employee at one and one-half times his/her regular rate of pay, for the time spent in any appearance as required by this Article. The employee shall demand a witness fee and shall reimburse same to the City. As a prerequisite for payment to off-duty employees, the Fire Chief or his designee must be notified in writing of the off-duty appearance within seventy-two hours after the employee is subpoenaed or otherwise notified of the required court appearance. The employee shall demand a witness fee and shall reimburse the same to the City.
- 5.5 Voluntary Grand Jury service such as that service in San Joaquin County, is not covered by Jury Duty leave.

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ARTICLE VI – MERIT INCREASES

- 6.1 Merit increases shall not exceed the next step of the salary range for the position's classification.

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ARTICLE VII - OVERTIME

- 7.1 All hours worked in addition to the regularly scheduled shifts shall be paid at the rate of one and one-half times the then regular rate of the employee. Overtime work shall be required of any employee to meet special or unusual needs of service beneficial to the City and community. All overtime work requires the prior approval of a supervisor. No employee on disciplinary or medical leave shall be eligible to work overtime.
- 7.2 Employees working overtime shall be paid in increments of 15 minutes. Time within any 15 minute increment shall be rounded off, with 0-7 minutes adjusting back to the preceding increment and 8-15 minutes adjusting forward to the next increment. Therefore, overtime shall be compensated in increments of 15 minutes at a rate of time and one-half.
- 7.3 Employees may accrue compensatory time in lieu of overtime pay. The accrual rate for compensatory time shall be one and one-half hours for each hour worked.

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- 7.4 No more than one hundred forty-four (144) hours of compensatory time shall be carried on the books at any time.
- 7.5 Bargaining unit members shall be allowed to cash out up to a maximum of 144 hours of earned compensatory time off twice per year, in April and October.
- 7.6 Upon separation, the employee shall be paid at the employee's current hourly rate or the average of the last three years whichever is higher, for the remaining compensatory balance.
- 7.7 Early call in or shift holdovers shall be compensated at the time and one-half rate.
- 7.8 Employees called to work outside their regular hours shall be paid at the rate of time and one-half the hourly rate for hours actually worked with a minimum guarantee of three (3) hours for each call.
- 7.9 If an employee requests time off that would result in the need for overtime, the employee must take a minimum of three (3) hours off unless the time off is for emergency reasons or has prior approval of the Fire Chief or his/her designee. Except for the first or last two or less hours of the shift, shift holdover or early relief would apply in these situations.
- 7.10 If a represented employee is called upon to perform the duties of a position exempt from the Fair Labor Standards Act, all provisions of this Article shall prevail.

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¶ Effective the pay period in which January 1, 2008 falls, represented employees shall receive a 4.5% salary increase. Retroactivity includes base salaries and all other items that are calculated using base pay. ¶

8.2 Effective the pay period in which January 1, 2009 falls, represented employees shall receive a cost of living increase based on the CPI-W index for San Francisco. The CPI increase shall be no less than 3.5% and no greater than 5%.

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ARTICLE VIII - SALARY

- 8.1 The terms and conditions of this MOU shall continue in effect during the term of this MOU. The City of Lodi and LPF agree that the term is January 1, 2012 through November 30, 2013, with the exception of Paragraph 23.2 which shall continue in effect through January 1, 2014.
- 8.2 Although the City is not required to perform a survey during the term of this MOU, the parties agree that if a survey is performed, the fifteen cities to be surveyed are as follows:

| | | |
|-----------|---------|-----------|
| Chico | Clovis | Davis |
| Fairfield | Merced | Manteca |
| Modesto | Redding | Roseville |
| Stockton | Tracy | Turlock |
| Vacaville | Visalia | Woodland |

8.3 LPF and the City of Lodi agree to meet and confer on determining nine cities to be used for future surveys in place of the fifteen that are currently included in this Article.

8.4 If any City bargaining unit negotiates for or otherwise receives a salary increase or a higher value medical and/or retirement benefit for the MOU negotiated or one that replaces the MOU (or last/best/final offer imposed) that otherwise expires on December 31, 2013 the LPF will receive the same benefit.

8.5 The LPF and the City entered into a concession agreement dated June 2011 where under the LPF agreed to certain concessions that would continue through June 30, 2012. The concessions set forth in that agreement shall continue in effect as set forth therein, not withstanding the execution of this MOU.

ARTICLE IX - TUITION REIMBURSEMENT

9.1 In addition to the City policy, individuals enrolling in courses offered by recognized professional organizations which are not accredited through a college or university shall be eligible for up to a maximum of \$300.00 per fiscal year, to be paid upon the satisfactory completion of course work. The total monetary benefit shall not exceed the amount listed in the City Policy Manual.

ARTICLE X – DEFERRED COMPENSATION

10.1 The City shall match contributions by bargaining unit members to a deferred compensation program up to a maximum of 3% of the member's salary beginning in the pay period in which July 1, 2012 falls.

ARTICLE XI - UNIFORM ALLOWANCE

11.1 The City shall, on a one-time basis, provide each present and future employee with three department approved uniform shirts and three pair of department approved uniform pants of a flame retardant fabric. After this initial issue the maintenance and replacement of the uniform is the employee's responsibility.

11.2 The uniform allowance shall be \$950 per year, paid quarterly, as part of the last bi-weekly paycheck in the months of March, June, September, and December.

ARTICLE XII - WORKERS' COMPENSATION

12.1 In the event that a member of the LPF is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his duties, he shall become entitled, regardless of his period of service with the City, to leave of absence while so disabled without loss of salary, in lieu of temporary disability payments, if any, which would be payable under this chapter, for the period of such disability but not exceeding one year, or until such earlier date as he is retired on permanent disability pension. (State of California Labor Code, Article 7, Section 4850.)

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- 12.2 The City shall implement Article 4850.3 of the Labor Code which provides for advance disability payments prior to receipt of industrial disability retirement allowance to the member.

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ARTICLE XIII- BILINGUAL PAY

- 13.1 Bilingual pay of \$150.00 per month shall be paid to all LPF members for speaking Spanish and/or Punjabi, subject to the eligible employee passing a proficiency exam administered and approved by the City.

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Deleted: <#>Definition:¶

¶ A Performance Incentive Bonus (PIB) is a monetary reward for meritorious performance above and beyond what is expected and required of all employees who satisfactorily meet the standards of their job.¶

¶ The bonus shall be \$1,500.00 for those employees who have completed the service requirements of ten (10) years, and \$3,000.00 for those employees who have completed the service requirements of twenty (20) years.¶

¶ The bonus is not a part of base salary. Receipt of the bonus for one (1) year does not affect the following year. Employees must submit a new application for each year they wish to be considered for the PIB.¶

¶ It is understood that the bonus is discretionary, and is based upon meritorious performance as described in the PIB evaluation criteria.¶

¶ Employees who are granted a PIB by the evaluation committee shall be issued a separate check for the appropriate amount in November of each year of this contract.¶

¶ <#>Eligibility:¶

¶ To be eligible to apply for the bonus, employees must meet the following minimum qualifications:¶

... [1]

ARTICLE XIV- LONGEVITY PAY

After completing ten years of service with the Lodi Fire Department, employees shall receive an annual longevity pay in the amount of \$1,500 in November of the year following completion of ten years of service and each year thereafter until completing twenty years of service with the Lodi Fire Department. Employees who have completed twenty years of service with the Lodi Fire Department will receive longevity pay in the amount of \$3,000 in November of the year following completion of twenty full years of service and each year thereafter.

For the purposes of this Article, all employees who as of October 31st meet the service level requirements (either ten full years or twenty full years from the first day of the month in which they started their employment with the City of Lodi Fire Department) shall receive the longevity pay associated with their years of service with the Lodi Fire Department.

The incentive in this Article is limited to employees hired prior to April 18, 2012.

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Chapter 2. Leaves

ARTICLE XV- CATASTROPHIC LEAVE

- 15.1 LPF members shall be covered by and subject to the Citywide Catastrophic Leave Policy set forth in the City's current Administrative Policy Manual.

ARTICLE XVI- HOLIDAYS

- 16.1 Shift Employees in the LPF shall earn 156 hours of holiday leave per year. In January of each year, every shift employee's holiday account shall be credited with 156 hours. Employees hired mid-year or terminating mid-year shall have holiday hours credited or deducted at the rate of 6.0 hours per pay period.

- 16.2 A shift employee may opt to schedule holidays or to be compensated at the straight time rate for all hours of holiday leave. During the course of the year, an employee who opted to use scheduled holidays may at their request and at the sole discretion of the Fire Chief, schedule a day off in lieu of cash payment. Each year, the pay period in which December 1 falls, employees shall be paid for the unused holidays at the straight-time rate as of December 31 of the year in which the holidays were earned.

- 16.3 Non-shift employees shall observe 9 1/2 fixed holidays per year:

| | |
|------------------------------|--------------------------------------|
| ◇ New Year's Day | January 1 |
| ◇ Martin Luther King Day | 3 rd Monday in January |
| ◇ President's Day | 3 rd Monday in February |
| ◇ Memorial Day | 4 th Monday in May |
| ◇ Independence Day | July 4 |
| ◇ Labor Day | 1 st Monday in September |
| ◇ Thanksgiving Day | 4 th Thursday in November |
| ◇ Day after Thanksgiving Day | Friday following Thanksgiving Day |
| ◇ Christmas Eve (four hours) | December 24 |
| ◇ Christmas Day | December 25 |

The employee shall also be granted four additional holidays to be taken at a time mutually agreeable to the employee and the Fire Chief.

If a scheduled holiday falls on a regularly scheduled day off the employee shall take off the day preceding or day succeeding the holiday. Floating holidays shall be prorated upon hiring and termination at the rate of one holiday for each three-month period worked.

- 16.4 Nothing in this MOU is construed to change the manner in which holidays or vacations are scheduled.

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- 16.5 It is mutually agreed that two represented employees per shift shall be allowed to schedule vacations or holiday time. Leave for sickness, injury, or leave for school shall not effect this time off.

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ARTICLE XVII - LEAVES OF ABSENCE

17.1 Leaves of Absence

The City and LPF mutually agree that inability to return to work after an employee's sick leave has been exhausted shall be considered an urgent and substantial reason for the granting of a leave of absence in accordance with the Leave of Absence policy in the City of Lodi Administrative Policy Manual.

- 17.2 The City interprets this Section as providing that the conditions under which an employee shall be restored to employment on the termination of leave of absence shall be stated as clearly as possible at the time by the City in conjunction with the granting of the leave of absence. The City reaffirms its policy that an employee's status as a permanent employee is not impaired by such leave of absence.

- 17.3 Employees who are placed in a Leave Without Pay status following the expiration of sick leave, vacation, or compensatory time off, such that the employee is no longer in a pay status shall not receive employer paid employment benefits. However, if the leave is for medical reasons the medical insurance will be carried for three months at the City's expense. Other health benefits may be continued at the employee's expense.

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- 17.4 Firefighters are entitled to leave without pay or other benefits for up to four months from the date of disability for disabilities because of pregnancy, miscarriage, childbirth, or recovery therefrom when sick leave has been exhausted. The date on which the employee shall resume duties shall be determined by the employee on leave and the employee's physician.

- 17.5 An employee on leave for pregnancy disability under this policy shall be entitled to return to the same position, or to a position comparable to that held at the time the leave commenced. A physician's release must be provided prior to an employee's return to work.

- 17.6 An employee seeking pregnancy/disability leave shall be required to provide a reasonable notice in writing (not less than four weeks) to the City of the anticipated date upon which leave shall commence, although the commencement date shall vary according to the employee's actual disability. She must also provide an estimate of the duration of the leave.

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ARTICLE XVIII - SICK LEAVE

- 18.1 Shift employees shall accumulate sick leave with pay at the rate of 5.54 hours per pay period. Employees working a 40-hour week shall earn 3.70 hours per pay period.
- 18.2 Sick leave accumulated shall be unlimited.
- 18.3 One working day is defined as 12 work hours (1 duty day) for all LPF personnel working on a shift schedule.
- 18.4 Absence to care for a member of an employee's immediate family is authorization to use up to 72 hours of accumulated sick leave. Generally no more than 120 hours of family sick leave shall be approved in one calendar year.

ARTICLE XIX - VACATION**Beginning with:**

| | |
|-----------------------------|----------------------------|
| Date of Hire: | 5.54 hours per pay period |
| 6th year | 8.31 hours per pay period |
| 15th year | 11.08 hours per pay period |
| 21st year | 11.65 hours per pay period |
| 22nd year | 12.20 hours per pay period |
| 23rd year | 12.76 hours per pay period |
| 24th year | 13.32 hours per pay period |
| 25 th year/above | 13.88 hours per pay period |

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Members of LPF will have the option of cashing out any vacation time in excess of two tours of duty. Members must utilize at least two tours of their vacation time each year. Members shall request a cash out of vacation time by November 15th of each year and will receive the payout of vacation time at straight time pay and by December 31st of each year.

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Deleted: 19.1 From 0 through 5 years of continuous employment, vacation shall accrue at the rate of 5.54 hours per pay period. ¶

¶ 19.2 From 6 through 15 years of continuous employment, vacation shall accrue at the rate of 8.31 hours per pay period. ¶

¶ 19.3 At the completion of 15 years of continuous employment, vacation shall accrue at the rate of 11.08 hours per pay period. ¶

¶ 19.4 At the completion of 25 years of continuous employment, vacation shall accrue at the rate of 13.85 hours per pay period. ¶

¶ One (1) working day is defined as twelve (12) work hours (1 duty day) for all Fire Department personnel working on a shift schedule.

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Chapter 3. Insurance and Retirement

ARTICLE XX – CHIROPRACTIC INSURANCE

- 20.1 Chiropractic services may be received by employees and dependents through a chiropractic insurance plan.
- 20.2 The City shall pay the full costs of premiums for the employee and dependent(s) during the life of this agreement.

ARTICLE XXI - DENTAL INSURANCE

- 21.1 The City shall provide Stanislaus Foundation dental plan or an equivalent level of benefits for the term of this agreement.
- 21.2 The City shall pay the increased cost of such premiums for the life of the agreement.

ARTICLE XXII - MEDICAL INSURANCE

- 22.1 The City shall pay 100% of the premium for employees only up to the highest HMO available in Lodi except as set forth below.
Effective January 1, 2013, the City's contributions to the premiums for medical insurance coverage will be capped at the following rates and employees shall be responsible for premium costs in excess of this amount:

| | |
|-------------|-----------|
| Single | \$610.44 |
| EE + 1 | \$1220.88 |
| EE + family | \$1587.14 |

Deleted: All employees shall be offered medical insurance for themselves and dependents through CalPERS medical plans.

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- 22.2 Any employee who is otherwise covered by a medical plan and chooses not to utilize the full extent of medical coverage available to him or her and, as applicable, to his or her dependent(s) may opt to receive fifty (50) percent of the highest HMO plan referenced in 22.1 provided however, that (a) such election shall only be available to the extent allowed by the City's insurer, and (b) this shall not be construed to allow individuals without dependents to receive any portion of the dependent premium.

Effective the pay period in which January 1, 2013 falls, opt-out monies will be capped at the following amounts:

| | |
|-------------|----------|
| EE only | \$305.22 |
| EE + 1 | \$532.92 |
| EE + Family | \$692.81 |

- 22.3 The City intends to propose a Cafeteria-based benefit program in 2012. This program would incorporate, but not be limited to: medical, vision, dental, chiropractic, and life insurance. The above listed terms of this MOU will be reopened for negotiation upon the City's presentation of a Cafeteria Plan.

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 Single \$610.44
 EE + 1 \$1220.88
 EE + family \$1587.14

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23.1 The City shall provide the PERS retirement program commonly known as the “3% at 50 program”. Said program shall include the following additional benefits:

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24.1 For all unused sick leave, a represented employee with ten years of employment with the City shall be eligible to receive medical, dental and vision insurance coverage upon retirement (but not upon resignation, transfer or termination) on the following basis:

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For example:

Robert Smith retires with 20 years service and 1800 hours of unused sick leave.
City paid monthly medical insurance premiums are \$344.45 for him and his wife.

$$\begin{aligned} 1800 - (1800 \times 16 \frac{2}{3}) &= 1500 \text{ hours} \\ 1500 \div 12 &= 125 \text{ days} \times 75\% = 93.75 \\ 93.75 \times \$344.45 &= \$ 32,292.19 \end{aligned}$$

This amount shall be reduced each month by the current premium(s) for the employee and dependent until the balance is gone. In the event the retiree dies the remaining bank shall be reduced by 50% and the survivor may use the bank until the balance is gone.

- 24.2 In the event an active employee dies before retirement and that employee is vested in the sick leave conversion program, the surviving dependents shall have an interest in one-half the value of the bank as calculated in Section 24.1.
- 24.3 Represented employees who retire on a service retirement and are eligible to convert accrued, unused sick leave into City paid insurance upon retirement shall be given the option of purchasing, at the retiree's cost, additional insurance for a period of time equal to the period of time for which they received City paid insurance upon retirement.
- Employee's option shall be exercised upon expiration of the City paid coverage.
- 24.4 In accordance with the sick leave conversion provision outlined in this MOU, a surviving spouse of either an active or retired member may be continued on the medical insurance plan and/or dependent coverage at the appropriate premium for the same period as if the employee had not died.
- 24.5 An employee eligible for the sick leave conversion program defined in Section 24.1 may choose instead to receive a cash settlement for all or part of unused sick leave at the rate of \$.30 on the dollar. Under this provision, the employee's sick leave balance at the time of retirement shall be converted to dollars at the employee's current pay rate.
- 24.6 Out of area retirees may receive reimbursement for insurance premiums up to the City's liability as specified in Section 24.1.
- 24.7 The City shall modify its contract with PERS to add credit for unused sick leave per Government Code Section 20862.8. This benefit is available to all employees regardless of the date hired; however, it is the only sick leave conversion benefit available to employees hired after December 6, 1995. Reporting of unused sick

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leave shall be pursuant to PERS regulations on said issue. If an eligible employee opts to utilize the provisions of Section 24.1 the City shall report to PERS they have zero (0) hours of unused sick leave.

ARTICLE XXV- VISION CARE

- 25.1 The City shall provide and pay for a vision care plan underwritten by VSP or comparable vision care plan. Such comparable vision care plan shall be the same as the plan offered to mid and executive management employees in the City. The plan shall have a \$25 deductible, shall provide annual examinations and lenses. Frames are available every two years.

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Chapter 4. Safety

ARTICLE XXVI - SAFETY COMMITTEE

- 26.1 A six-member Joint Safety Committee shall be formed to include three members of the LPF. This committee shall be charged with reviewing and making proposed solutions to items relating to safety standards, equipment, procedures, clothing and other safety related matters.

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Chapter 5. Work Hours, Schedules, Meals

ARTICLE XXVII- 56-HOUR WORK WEEK

- 27.1 ~~The work schedule for calendar year 2012, will be a schedule of “56-hours per week” with two on-duty shifts in six 24-hour periods. For purposes of the FLSA, it is mutually understood the City has declared a 24 day work cycle. The work schedule for calendar year 2013 may change predicated on the review of the calendar year 2012 “48/96” work schedule. If the work schedule changes for calendar year 2013, it would revert to three on-duty shifts in nine (9) 24-hour periods. The FLSA work cycle would also revert to a 27 day work period.~~

~~For purposes of overtime calculations under the FLSA, sick leave, vacation leave, compensatory time, and holiday leave will be considered time worked~~

- 27.2 If an employee assigned to a 56-hour work week schedule terminates his/her employment in the middle of a two week payroll cycle, the employee’s pay for that cycle shall be computed by multiplying the number of days between the first day of the payroll cycle and the last shift worked by eight (8) hours or the number of actually worked in that payroll cycle, whichever is greater.
- 27.3 It is agreed that the work schedule of the Fire Inspector is a 40-hour week and that all holiday, vacation, and sick leave benefits are based on a 40-hour week rather than a 56-hour week.
- 27.4 In order to convert the hours for employees that move from a 40-hour work week to a 56-hour work week the following formulas shall be applied:

For conversion of Vacation:

From 40 to 56 hours.....Multiply by 1.8

From 56 to 40 hours.....Multiply by .555556

For conversion of Holiday and Sick Leave and Comp Time:

From 40 to 56 hours.....Multiply by 1.5

From 56 to 40 hours.....Multiply by .666667

ARTICLE XXVIII - SHIFT TRADES

- 28.1 It is mutually agreed that each employee may trade shifts.

~~A firefighter while on initial probation may initiate shift trades for a hardship, in writing, with approval from their Captain and Battalion Chief. Shift trades for probationary firefighters are acceptable for attendance at approved training classes or seminars only.~~

- 28.2 It is expressly understood that shift trades are requested by employees on a voluntary basis and are granted exclusively for employee convenience.

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- 28.3 A shift trade commitment shall be considered the equivalent of the employee's regularly assigned work day. Any member of the bargaining unit who agrees to a shift trade, but fails to report to work the agreed shift without a valid excuse may be subject to disciplinary action. An employee who agrees to exchange time with another employee and who then fails to report to work the agreed time because of illness, or who reports, but leaves early due to illness, may be required to provide a doctors note to verify the illness.
- 28.4 In the event that the person who had agreed to work is unable to do so, he/she shall make the necessary arrangements to fulfill the obligation. This can be accomplished by: trading with another employee meeting the shift trade requirements; forfeiting sick, holiday, compensatory time, or vacation time, whichever is appropriate based on department policy; or injury leave if appropriate.

Chapter 6. Association/City Issues

ARTICLE XXIX - ALCOHOL, SMOKING AND DRUGS

- 29.1 No member of the Fire Department hired after October 1, 1987 may at any time use any form of tobacco. This prohibition is considered a condition of employment.
- 29.2 The LPF shall be covered under the *Drug-Free Workplace* policy and procedure. In addition, the LPF shall be covered under the *Drug and Alcohol Testing* policy and procedure with the exception of random testing. (Section 34520(e) of the California Vehicle Code exempts fire employees from the provisions of the Omnibus Transportation Employee Testing Act of 1991.)
- 29.3 In the event an employee is involved in an accident while operating a City vehicle the employee shall not leave the scene of the accident until a determination for drug and/or alcohol testing has been made by the appropriate supervisor.
- 29.4 In the event an employee is being referred to drug and/or alcohol testing, the employee shall have the right to representation or a witness. The witness may include an on-duty employee, as long as there is no interference with business necessity.
- 29.5 Supervisors directing an employee to drug and/or alcohol testing shall document at the time of direction the reason(s) for such determination of the *Reasonable Suspicion Test* form, and present that form to the employee.
- 29.6 The reporting of prescription medication being taken by an employee to his/her supervisor shall be kept in confidence.
- 29.7 In the event an employee's locker or storage area is to be searched, the employee shall have the right to representation or a witness. The witness may include an on-duty employee, as long as there is no interference with business necessity.
- 29.8 If a member of the Fire Department has a drug, tobacco or alcohol problem or dependence, the City shall pay the difference between the employee's insurance and the cost of an appropriate rehabilitation program.
- 29.9 All supervisory employees, including those in the rank of Fire Captain, shall attend training on making a reasonable suspicion determination of being under the influence of drugs and/or alcohol, and the appropriate referral process. Such training shall be provided by the City of Lodi. Non-supervisory employees may attend the training provided that there is adequate attendance capacity, and that the cost of the training shall be borne by the employee.

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ARTICLE XXX - CITY RIGHTS

30.1 It is further understood and agreed between the parties that nothing contained in this MOU shall be construed to waive or reduce any rights of the City, which include, but are not limited to, the exclusive rights:

- ◇ to determine the mission of its constituent departments, commissions and boards;
- ◇ to set standards of service;
- ◇ to determine the procedures and standards of selection for employment;
- ◇ to direct its employees; to maintain the efficiency of governmental operations;
- ◇ to determine the methods, means and personnel by which government operations are to be conducted;
- ◇ to take all necessary actions to carry out its mission in emergencies; and
- ◇ to exercise complete control and discretion and the technology of performing its work.

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30.2 City rights also include the right to determine the procedures and standards of selection for promotion, to relieve employees from duty because of lack of work or other legitimate reasons, to take disciplinary action, and to determine the content of job classifications; provided, however, that the exercise by the City of the rights in this paragraph does not preclude employees or their recognized employee organizations from filing grievances regarding the practical consequences that decisions on such matters may have on wages, hours or other terms and conditions of employment.

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30.3 Per Side Letter dated September 14, 2011: The Lodi Professional Firefighters (LPF) recognizes and accepts the City's right to determine the procedures and standards of selection for promotion. This recognition does not preclude the LPF from discussing with the City the LPF's point of view as it relates to the timeliness and necessity of promotions. The merits of each promotion should be discussed by both parties with the intent of reaching an understanding. It is the LPF's contention that economics is one component and should not be the sole deciding factor when determining whether to promote or not. It is through joint discussions that the City and the LPF believe resolution can be found.

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ARTICLE XXXI – COMPLETE AGREEMENT

31.1 The parties acknowledge that during the negotiations which resulted in this MOU, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the scope of negotiations, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in the MOU. Any other prior existing understanding or agreements by the parties, whether formal or informal, regarding any such matters are hereby superseded or terminated in their entirety.

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31.2 Per the Side Letter signed on May 20, 2004: Except as required by operational/or business necessity impacting City employees as a whole, there shall be no changes to

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the Rules for Personnel Administration during the term of this MOU. This does not prevent the parties from mutually agreeing to meet and confer over proposed changes to the Rules during the term of this MOU.

ARTICLE XXXII - CONCERTED ACTIVITIES

- 32.1 Represented employees agree that they shall not strike, withhold services, engage in “slow downs” or “sick ins” or participate in any other form of concerted activity which is intended to or which does adversely affect job performance or rendering of City services.

ARTICLE XXXIII - EMPLOYEE REPRESENTATION

- 33.1 This Memorandum of Understanding (hereinafter referred to as "MOU") is entered into between representatives of the City of Lodi (hereinafter referred to as "City") and representatives of the Lodi Professional Firefighters (hereinafter referred to as "LPF").

The parties to this MOU acknowledge and agree that this MOU constitutes the result of meeting and conferring in good faith as contemplated by Section 3500 et seq. of the Government Code of the State of California, and further acknowledge and agree that all matters upon which the parties reached agreement are set forth in this MOU.

The terms and conditions of this MOU are applicable to those employees in those positions represented by the LPF of the City of Lodi, i.e., Firefighter I, Firefighter II, Fire Engineer, Fire Captain, and Fire Inspector. It is mutually agreed that wages, hours, and other terms and conditions of employment of such employees shall be as hereinafter set forth. Except as specifically stated in this Memorandum, all existing benefits currently being furnished to employees and all existing terms and conditions of employment are to continue in effect unless and until the parties meet and confer regarding a change in such existing benefits, terms or conditions of employment.

The terms and conditions of this MOU shall continue in effect during the term of this MOU. The parties agree as follows:

- 33.2 The City and the LPF mutually agree that the City shall grant dues deduction to City employees who are members of the LPF in accordance with the terms and conditions set forth in Section 4, Rule 2 of City of Lodi Resolution No. 3344 entitled "Adopting Rules and Regulations to Implement Provisions of the Employee-Employer Relations Resolution." The LPF shall indemnify, defend and hold the City of Lodi harmless against any claims made and against any suit instituted against the City of Lodi on account of check-off of said employee organization's dues. In addition, the LPF shall refund to the City of Lodi any amounts paid to it in error upon presentation of supporting evidence.

Changes in the LPF membership dues rate shall be certified to the City, in writing, over the signature of the LPF President. The change shall be implemented as soon as practicable, but in no event later than thirty (30) days after the notification.

- 33.3 LPF shall maintain exclusive representation rights during the term of this MOU. Every employee covered by this MOU who is a member of LPF twenty (20) days after the signing of this MOU shall, as a condition of employment, maintain his or her membership in good standing in accordance with the Constitution and Bylaws of the LPF during the term of this agreement.
- 33.4 No employee covered by this Memorandum of Understanding shall be discriminated against by the City or by the Union with respect to any job benefits or other conditions of employment accruing from this agreement because of union membership, non-membership in the union, race, color, sex, creed, national origin, marital status, disability or political affiliation. It is understood that violations of this section are not subject to arbitration.
- 33.5 The City shall make available a period of one hour to the LPF in each recruit class with an end toward education of each employee of the rights and benefits under the collective bargaining agreement, as well as other association benefits, and the responsibilities of the employee and the association.
- 33.6 The City and LPF agree and understand that if any section of this MOU in any way conflicts with the terms and conditions of employment stated in other authorities, such as personnel rules, administrative policy and procedure manual, city resolutions, or city ordinances, any ambiguity shall be resolved in favor of the MOU language. If the MOU is silent on an issue, the current applicable document (i.e. policy manual) is controlling.
- 33.7 Members of the Lodi Professional Firefighters may contribute, individually, to an hourly account bank. This bank shall be monitored and administered by the Lodi Professional Firefighters Secretary. Hours may not exceed more than 600 hours on a yearly basis. The President of the Lodi Professional Firefighters shall designate members that can use the hours. No more than two persons shall be off at a time and this shall not effect the regular time off calendar. Five days notice must be given to the Fire Chief prior to using the bank. Hours may be donated from member's vacation leave, holiday leave or compensatory time off. The member's leave account shall be charged an equivalent amount of time required to cover the absence of the member utilizing the LPF bank. A form shall be generated for this purpose by the Lodi Professional Firefighters to notify the Fire Chief and Finance.

ARTICLE XXXIV - GRIEVANCE PROCEDURE

- 34.1 This grievance procedure shall be used to process and resolve disputes regarding the interpretation or application of any of the terms and conditions of this MOU,

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letters of understanding, and formal interpretations and clarifications executed by the LPF and the City.

The intent of this procedure is to resolve grievances informally at the lowest possible level and to provide an orderly procedure for reviewing and resolving grievances promptly.

The term "day" means a working day i.e. Monday through Friday excluding fixed City Hall closures.

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A grievance is a good faith complaint of one or a group of employees or a dispute between the City and the LPF involving the interpretation, application, or enforcement of the express terms of this MOU and other express written terms and conditions of employment or clear past practices.

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As used in this procedure, the term "party" means an employee, the LPF, the City or the authorized representatives of any party. The employee is entitled to representation through all the steps in this procedure.

Matters of discipline are to be handled exclusively in accordance with the provisions of section 34.4.

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34.2 INFORMAL PROCEDURE

The informal procedure must be used as an initial step in all grievances. An employee or their representative having a grievance arising from employment in the municipal service shall seek adjustment of the grievance initially through verbal contact with their immediate supervisor within twenty (20) working days of the date of the action being grieved, or the date the grieving party became aware of the incident which is the basis of the grievance. The employee or his/her representative shall state the nature of the grievance and any pertinent information required for the supervisor to sufficiently investigate the incident and resolve the grievance. Should the immediate supervisor be unable to make a satisfactory adjustment, the employee or their representative may seek adjustment through verbal contact to the next higher level of supervision up to and including the Fire Chief. The time allowed between steps in this process is ten (10) working days. All verbal contacts shall be documented as to the date, time and place of the contact.

In matters involving disputes between two employees (including personality conflicts between an employee and his/her supervisor), the two employees should meet in an attempt to resolve their differences. If they cannot resolve the issues between themselves, the complaint procedure outlined in the Lodi Fire Department Policy Manual shall be used as the Informal Grievance Procedure.

Should the employee progress through the above steps and find that the Fire Chief is unable to make a satisfactory adjustment within the time frame given, or is a

party to the grievance, the employee or his representative may seek adjustment through the Formal Grievance Procedure.

34.3 FORMAL PROCEDURE

An employee who has not received satisfactory adjustment through the use of the Informal Grievance Procedure may, within ten (10) working days of the last time deadline of the Informal Procedure, file a Formal Grievance. Initiation of the formal grievance procedure requires that the grievance be submitted in writing. The steps of the Formal Grievance Procedure are as follows:

- Step A. Class Action Grievances or a Lodi Fire Department Grievance Form is filed with the Fire Chief. If satisfactory adjustment is not attained the employee or his/her representative may proceed to Step B within ten (10) working days.
- Step B. Class Action Grievances or A Lodi Fire Department Grievance Form is filed with the City Manager. The City Manager or designee shall investigate the grievance and shall respond in writing within ten (10) working days. If satisfactory adjustment is not attained the employee or his representative may proceed to Step C within ten (10) working days.
- Step C. If the grievance is not resolved by the City Manager or designee, arbitration shall be the final level of appeal for grievances and discipline. It is agreed by both parties that the decision of the arbitrator is binding and final on both parties and that if this procedure is utilized all other avenues of appeal are waived. If arbitration is chosen the City must be notified by the grievant or his/her representative within fifteen (15) working days following the City Manager's decision.

Within ten (10) working days after the request for arbitration is received by the City or at a date mutually agreed to by the parties, the parties shall meet to select an impartial arbitrator. If no agreement is reached at this meeting, the parties shall immediately and jointly request the State Conciliation and Mediation Service to submit to them a panel of five (5) arbitrators from which the City and the LPF shall alternately strike names until one (1) name remains; this person shall be the arbitrator. If the State Conciliation and Mediation Service cannot provide a list of five (5) arbitrators, the same request shall be made of the American Arbitration Association.

To insure that the arbitration process is as brief and economical as possible, the following guidelines shall be adhered to:

1. An arbitrator may, upon mutual consent of the parties, issue a decision, opinion or award orally upon submission of the arbitration.

2. Both parties and the arbitrator may tape record the hearing.
3. There shall be no official transcript required; however, either party may utilize a court reporter at its own sole expense. The cost of a court reporter required by an arbitrator shall be shared equally by the parties.
4. The parties may agree to prepare a joint letter submitting the issue(s) in dispute. The letter shall present the matter on which arbitration is sought and shall outline the MOU provisions governing the arbitration. It may contain mutually agreed on stipulations of fact and it may be accompanied by any documents that the parties mutually agree shall be submitted to the arbitrator in advance of the hearing which may not necessarily be stipulations of fact. Further, if the parties mutually agree, the entire matter may be submitted to arbitration for review without a hearing. Absent agreement to prepare a joint letter, the parties may submit separate letters.
5. The strict rules of evidence are not applicable but shall be of a type or kind relied upon by prudent people in the conduct of serious business and the hearing shall be informal.
6. The parties have the right to present and cross examine witnesses issue opening and closing statements, and file written closing briefs. Testimony shall be under oath or affirmation.
7. The arbitrator may exclude testimony or evidence which he/she determines irrelevant or unduly repetitious.
8. The arbitrator may exclude witnesses and observers from the hearing at his or her discretion.
9. The arbitration hearing shall be held on the employer's premises.
10. The cost of arbitration shall be borne equally by the parties. However, the cost, if any, of cancellation or postponement shall be the financial responsibility of the party requesting such delay unless mutually agreed by the parties.

The decision, opinion, or award shall be based on the record developed by the parties before and during the hearing, unless otherwise agreed to by the parties. The decision shall be in writing and shall contain the crucial reasons supporting the decision and award.

The arbitrator has no power to add to, subtract from, or modify the terms of the MOU or the written ordinances, resolutions, rules, regulations and procedures of the City, nor shall he/she impose any limitations or obligations not specifically provided for under the terms of the MOU. The arbitrator shall be without power or authority to make any decision that requires the City or management to do an act prohibited by law.

The arbitrator has no power to add to a disciplinary action.

The arbitrator's decision shall be final, binding, and precedential and the arbitrator's decision shall possess the authority to make an employee whole to the extent such remedy is not limited by law, including the authority to award back pay, reinstatement, and to issue an order to expunge the record of all references to a disciplinary action if appropriate.

If the City believes that the matter is not arbitrable and/or not grievable, the matter shall be bifurcated. The parties shall select an arbitrator to hear the issue of arbitrability only. In the event that the arbitrator determines the matter to be arbitrable, the parties shall select a second arbitrator to hear the merits of the case.

By filing a grievance and processing it beyond the City Manager the grievant expressly waives any right to statutory remedies for the same contract remedies that were available through arbitration or to the exercise of any legal process other than is provided by the grievance/arbitration procedure for those contractual remedies under this contract. The process in a grievance beyond the City Manager shall constitute an express election on the part of the grievant that the arbitration procedure is the chosen forum for resolving the issues contained in the grievance, and that the grievant shall not resort to any other forum or procedure for resolution or review of the issues. The parties do not intend by the provisions of these paragraphs to preclude the enforcement of any arbitration award in any court of competent jurisdiction.

Allegedly discriminatory acts by the city may be addressed through the judicial system, DFEH, EEOC, and/or the City's internal complaint procedure system as provided by law. Allegedly discriminatory acts are not subject to this procedure.

34.4 GRIEVANCE INVOLVING A DISCIPLINARY ACTION

This section sets forth the exclusive means for grieving disciplinary actions in the form of a written reprimand, demotion, suspension or dismissal. In the event the

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employee wishes to challenge the City Manager's final decision on such discipline, the employee shall appeal the decision to binding arbitration, commencing with Step C of Article 34.3 of this MOU. All other, lesser forms of discipline shall be reviewable by the Fire Chief without a further right of appeal.

ARTICLE XXXV - LAYOFF PROCEDURE

- 35.1 It is mutually agreed by both parties that the layoff procedure, incorporated in the Policy and Procedure manual, dated May 1, 1995 is included in this MOU by reference and it is further agreed that both parties interpret it to mean that time served in a higher level shall be counted at a lower level for purposes of determining order of layoff.

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ARTICLE XXXVI - PHYSICAL FITNESS

- 36.1 It is agreed that the physical fitness program shall be continued and shall meet the following goals:

1. Provide a complete physical examination on an annual basis. These examinations to be performed by professional medical staff contracted for by the City.
2. Provide a fitness assessment which will evaluate each individual employee's fitness as compared to the YMCA normative scores which are defined as:

"a percentage based on fitness evaluations performed by the YMCA and are categorized according to age group and sex."

The fitness assessments shall be performed by professional assessors contracted for by the City.

3. Provide an individual program of exercise based on age, sex and present physical condition.
4. Provide attainable goals for each individual which would be measurable through the fitness assessment provided.
5. Provide for in-house exercise activities.
6. Provide an exercise program which shall improve cardiovascular conditioning, body fat composition, flexibility, grip strength, abdominal strength, low back strength, chest (arm) strength, back strength, quadriceps and hamstring strength.

It is further agreed that:

1. The program shall be mandatory for all employees in the bargaining unit.

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2. The program shall be scheduled as a high priority item and work out times shall normally be available between 0800 and 1700 hours excluding lunch period and breaks. The City shall provide adequate equipment to carry out the intent of the program.
3. The equipment used for this program is not to be used by anyone other than City of Lodi Fire personnel.
4. Confidentiality of records shall be maintained for the protection of the employees.

ARTICLE XXXVII - PROBATION

- 37.1 During probationary period, twelve (12) months, the new hire or promotional employee shall be entitled to sick leave benefits. Upon completion of probation, employees are eligible for merit increases.
- 37.2 Employees on initial probation may not utilize vacation accruals.
- 37.3 Probationary releases are appealable only to the extent required by law.

ARTICLE XXXVIII - SEVERABILITY

- 38.1 In the event that any provision of this MOU is found by a court of competent jurisdiction to be invalid, all other provisions shall be severable and shall continue in full force and effect.

ARTICLE XXXIX – MISCELLANEOUS

- 39.1 LPF and the City of Lodi will meet and confer on entry level minimum qualifications.

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FOR PERSONNEL
ADMINISTRATION¶
BETWEEN¶
THE CITY OF LODI AND THE LODI
PROFESSIONAL FIREFIGHTERS ¶**

¶

¶

The Rules for Personnel Administration shall be applicable to the firefighters bargaining unit, with the exception of the attached changes (2 pages), which comprise amendments to those rules in respect to the fire fighters bargaining unit.¶

¶

Except as required by operational/or business necessity impacting City employees as a whole, there shall be no changes to the Rules for Personnel Administration during the term of this agreement. This does not prevent the parties from mutually agreeing to meet and confer over proposed changes to the Rules during the term of this Agreement.¶

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SCHEDULE A**LPF Positions****Effective 4/18/12**

| Occupation Title | Step A | Step B | Step C | Step D | Step E |
|------------------|---------|---------|---------|---------|---------|
| Fire Captain | 6102.66 | 6407.79 | 6728.17 | 7064.58 | 7417.81 |
| Fire Engineer | 5271.71 | 5535.29 | 5812.06 | 6102.66 | 6407.79 |
| Fire Fighter I | 4130.51 | | | | |
| Fire Fighter II | 4553.86 | 4781.55 | 5020.62 | 5271.66 | 5535.24 |
| Fire Inspector | 5535.29 | 5812.06 | 6102.66 | 6407.79 | 6728.18 |

LODI PROFESSIONAL FIREFIGHTERS**CITY OF LODI
A MUNICIPAL CORPORATION****Brad Doell, Fire Captain**

Date: _____

Konradt Bartlam, City Manager

Date: _____

Oscar Picazo, Fire Engineer

Date: _____

Dean Gualco, Human Resources Manager

Date: _____

Paul Alvarez, Fire Engineer

Date: _____

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William Broderick, Fire Captain

Randi Johl, City Clerk

Date: _____

APPROVED AS TO FORM:

D. Stephen Schwabauer, City Attorney

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Joseph Hansen, Fire Captain¶
Date: _____, ¶

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Definition:

A Performance Incentive Bonus (PIB) is a monetary reward for meritorious performance above and beyond what is expected and required of all employees who satisfactorily meet the standards of their job.

The bonus shall be \$1,500.00 for those employees who have completed the service requirements of ten (10) years, and \$3,000.00 for those employees who have completed the service requirements of twenty (20) years.

The bonus is not a part of base salary. Receipt of the bonus for one (1) year does not affect the following year. Employees must submit a new application for each year they wish to be considered for the PIB.

It is understood that the bonus is discretionary, and is based upon meritorious performance as described in the PIB evaluation criteria.

Employees who are granted a PIB by the evaluation committee shall be issued a separate check for the appropriate amount in November of each year of this contract.

Eligibility:

To be eligible to apply for the bonus, employees must meet the following minimum qualifications:

Employees must have completed at least ten (10) full years of service in this bargaining unit with the City of Lodi by the beginning of the preceding time period being evaluated (i.e. to be eligible for consideration in November of 2004, an employee shall have had to complete ten (10) full years of service by June 30, 2004).

Employees must have, at a minimum, a rating of meets standards, in the overall factor rating listed on the performance evaluation.

Special duty assignments shall include but are not limited to: Associate, and or member of a team (maintaining team qualifications and training hours); Actively participating in team deployments; Participation in Wildland fire deployment; Performing fire investigations; Public education activities; ROP program instruction; Active committee participation; SOP design and implementation; Training class instruction; Participation with civic/community organizations.

Employees must not have received discipline issued beyond an oral reprimand.

Employees must not have received a positive drug test.

Employees must have worked a minimum of eight months during the qualifying period.

Employees must have met the minimum qualifications by the beginning of the preceding time period being evaluated.

Evaluation of Application (Process):

The PIB process shall consist of a committee evaluation, conducted on an annual basis and shall be based upon the preceding year's evaluation (July – June), and the events, activities, and actions during this same period of time.

An evaluation committee shall be appointed to review and evaluate the applications. The evaluation committee shall be composed of two (2) representatives from the LPF, two (2) representatives from Fire Department management, and one (1) representative from the Human Resources Department.

Applications for PIB must be made in writing on the designated application form within the time period allotted by the evaluation committee.

Applicants shall be evaluated only upon written documentation including but not limited to what is provided in applicants' application, their performance evaluation and any actions and events during the rating period including but not limited to the following: attendance, disciplinary actions, service awards, commendations, etc.

The criteria used by the evaluation committee shall be determined and developed in advance of implementation by Human Resources and the Fire Chief and subject to agreement with a representative from LPF.

The decision of the committee shall be provided to each applicant in writing. The vote of the committee shall be in confidence. Members of the committee shall maintain confidentiality in respect to all committee processes including voting. No committee member shall disclose to any person outside the committee any discussion of the committee or information concerning the voting or process of the committee members.

The decision of the evaluation committee to grant or deny a PIB is final and binding, shall not be appealed, and is not subject to any grievance procedure. Any perceived technical errors regarding minimum qualifications for the bonus may be resubmitted for further review by the committee.

| Occupation Title | Step A | Step B | Step C | Step D | Step E |
|------------------|---------|---------|---------|---------|---------|
| Fire Captain | 5626.06 | 5907.37 | 6202.74 | 6512.87 | 6838.52 |
| Fire Engineer | 4860.01 | 5103.01 | 5358.16 | 5626.07 | 5907.37 |
| Fire Fighter I | 3807.94 | | | | |
| Fire Fighter II | 4198.22 | 4408.14 | 4628.54 | 4859.97 | 5102.97 |
| Fire Inspector | 5103.01 | 5358.16 | 5626.07 | 5907.37 | 6202.74 |

4.5% increase effective 1/1/08

| Occupation Title | Step A | Step B | Step C | Step D | Step E |
|------------------|---------|---------|---------|---------|---------|
| Fire Captain | 5879.24 | 6173.20 | 6481.86 | 6805.96 | 7146.25 |
| Fire Engineer | 5078.71 | 5332.64 | 5599.28 | 5879.24 | 6173.20 |
| Fire Fighter I | 3979.30 | | | | |
| Fire Fighter II | 4387.15 | 4606.50 | 4836.83 | 5078.67 | 5332.60 |
| Fire Inspector | 5332.64 | 5599.28 | 5879.24 | 6173.20 | 6481.86 |

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Jim Krueger, Deputy City Manager

Date: _____



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Set a Public Hearing for May 2, 2012, to approve the Final 2012/13 Action Plan for the Community Development Block Grant Program.

MEETING DATE: April 18, 2012

PREPARED BY: Community Development Department

RECOMMENDED ACTION: Set a public hearing for May 2, 2012 to approve the Final 2012/13 Action Plan for the Community Development Block Grant Program.

BACKGROUND INFORMATION: A public hearing is required as part of the federal requirements of the Community Development Block Grant (CDBG) program.

The Action Plan is the annual implementing document for the 2009-14 Consolidated Plan and provides a detailed description of each activity proposed for the fiscal year. It also contains the City's CDBG budget and goals for the fiscal year.

The Draft 2012/13 Action Plan was reviewed and approved by the City Council on March 21, 2012. The 30-day Public Review and Comment period began April 2nd and will conclude at the Public Hearing. Any public comments that were received during that 30-day period, and any supplemental information required for the Action Plan document will be provided at the May 2nd Public Hearing.

The adopted Action Plan document must be submitted to HUD no later than May 15, 2012 in order to receive funding beginning July 1, 2011.

FISCAL IMPACT: The Action Plan document is being completed as a pre-award activity that is reimbursed through the City's CDBG administrative allocation from HUD.

FUNDING AVAILABLE: Community Development Block Grant Program Administration

Jordan Ayers, Deputy City Manager

Konradt Bartlam
Community Development Director

KB/jw

APPROVED: _____
Konradt Bartlam, City Manager

Comments by the public on non-agenda items

THE TIME ALLOWED PER NON-AGENDA ITEM FOR COMMENTS MADE BY THE PUBLIC IS LIMITED TO FIVE MINUTES.

The City Council cannot deliberate or take any action on a non-agenda item unless there is factual evidence presented to the City Council indicating that the subject brought up by the public does fall into one of the exceptions under Government Code Section 54954.2 in that (a) there is an emergency situation, or (b) the need to take action on the item arose subsequent to the agenda's being posted.

Unless the City Council is presented with this factual evidence, the City Council will refer the matter for review and placement on a future City Council agenda.

Comments by the City Council Members on non-agenda items



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CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Conduct Public Hearing on April 18, 2012 to Consider Amending Lodi Municipal Code Chapter 13.20 – Electrical Service, by Repealing and Re-enacting Section 13.20.175 “Schedule ECA – Energy Cost Adjustment” in its Entirety to Include Flat Energy Cost Adjustment (ECA) Option

MEETING DATE: April 18, 2012

PREPARED BY: Electric Utility Director

RECOMMENDED ACTION: Conduct public hearing on April 18, 2012 to consider amending Lodi Municipal Code Chapter 13.20 – Electrical Service, by Repealing and Re-enacting Section 13.20.175 “Schedule ECA – Energy Cost Adjustment” in its entirety to Include Flat Energy Cost Adjustment (ECA) option.

BACKGROUND INFORMATION: The Electric Utility proposes a flat ECA option for customers taking service under schedule I-1 – This was at the request of one of our major customers. This benefits the customer by reducing the impact of the monthly ECA fluctuations. EUD staff will create a levelized payment option (flat ECA) based on projected sales divided by the budgeted NCPA All Resources Bill for the upcoming 12 month period (July-June) minus 8.31 cents. The resulting amount shall be automatically implemented for bills rendered during the 11 billing months beginning in July and ending in May. The June billing shall include a true-up for the actual ECA billed in the same 11 month period and the actual ECA for the month of June.

FISCAL IMPACT: None. This will only impact one customer and the full amount of ECA due will be collected within the fiscal year.

FUNDING: Not applicable.

Elizabeth A. Kirkley
Electric Utility Director

PREPARED BY: Matt Foskett, Rates and Resources Manager

EAK/MF/lst

APPROVED: _____
Konradt Bartlam, City Manager

ORDINANCE NO. _____

AN ORDINANCE OF THE LODI CITY COUNCIL AMENDING
LODI MUNICIPAL CODE CHAPTER 13.20 – ELECTRICAL
SERVICE – BY REPEALING AND REENACTING SECTION
13.20.175, “SCHEDULE ECA – ENERGY COST
ADJUSTMENT” IN ITS ENTIRETY

=====

BE IT ORDAINED BY THE LODI CITY COUNCIL AS FOLLOWS:

SECTION 1. Lodi Municipal Code Section 13.20.175, “Schedule ECA – Energy Cost Adjustment,” is hereby repealed and reenacted in its entirety to read as follows:

APPLICABILITY:

This schedule is applicable to all electric customers served by the City of Lodi. Each customer shall pay the applicable rate plus an Energy Cost Adjustment (ECA) for each kilowatt-hour (kWh) delivered to the customer. The adjustment shall be the product of the total kilowatt-hours (kWh) for which the bill is rendered times the ECA amount per kWh.

The purpose of the ECA is to adjust for increases/decreases to the City of Lodi's wholesale energy costs. This adjustment provides a mechanism to recover increased costs for wholesale energy or to lower collections when costs decrease below the base charge level.

RATES:

Effective July 6, 2007, the ECA billing factor for any given month shall be calculated as follows:

$$\text{ECA} = \frac{(a) + (b) - (c)(d+f) - (f)}{(e)}$$

Where:

(a) equals the amount the City of Lodi is actually charged by the Northern California Power Agency for the billing month, including adjustments for prior billing periods, less any third party revenue credits.

(b) equals the City of Lodi's estimated costs related to the acquisition of wholesale power, both financial and physical, procured directly by the City for the billing month, including adjustments for prior billing periods.

(c) equals the difference between actual retail energy sales and projected sales levels for the month which is two (2) months prior to the billing month.

(d) equals the ECA billing factor for the month which is two (2) months prior to the billing month.

(e) equals the forecast of projected retail energy sales for the billing month.

(f) equals the baseline energy cost for the City of \$0.0831.

The City of Lodi will recalculate the ECA each month, and resulting amount shall be automatically implemented for bills rendered during the following billing month. The ECA shall not be discounted.

SCHEDULE I-1 FIXED ECA OPTION:

Customers must elect this option prior to the start of the twelve month cycle (July-June) and must be billed for the entire twelve months under this option. Customers may opt out in the May prior to the next twelve month billing period.

The City of Lodi will calculate a fixed ECA based on projected sales divided by the budgeted NCPA All Resource Bill for the upcoming 12 month period (July-June) minus eight point three one (8.31) cents. The resulting amount shall be automatically implemented for bills rendered during the eleven billing months beginning in July and ending in May. The June billing shall include a true-up for the actual ECA billed in the same eleven month period and the actual ECA for the month of June.

SECTION 2. No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 3. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 4. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 5. This ordinance shall be published pursuant to law and shall become effective 30 days from the date of passage and adoption.

SECTION 6. The amended Schedules referenced above shall be effective on applicable electric utility billings prepared by the City of Lodi on or after _____, 2012, or the first date allowable under State law.

Approved this ____ day of _____, 2012

JOANNE MOUNCE
MAYOR

ATTEST:

RANDI JOHL
City Clerk

State of California
County of San Joaquin, ss.

I, Randi Johl, City Clerk of the City of Lodi, do hereby certify that Ordinance No. ____ was introduced at a regular meeting of the City Council of the City of Lodi held _____, 2012, and was thereafter passed, adopted, and ordered to print at a regular meeting of said Council held _____, 2012, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

I further certify that Ordinance No. ____ was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

RANDI JOHL
City Clerk

Approved to Form:

D. STEPHEN SCHWABAUER
City Attorney



***Please immediately confirm receipt
of this fax by calling 333-6702***

CITY OF LODI
P. O. BOX 3006
LODI, CALIFORNIA 95241-1910

ADVERTISING INSTRUCTIONS

SUBJECT: PUBLIC HEARING TO CONSIDER AMENDING LODI MUNICIPAL CODE
CHAPTER 13.20 – ELECTRICAL SERVICE – BY REPEALING AND
REENACTING SECTION 13.20.175, "SCHEDULE ECA – ENERGY COST
ADJUSTMENT," IN ITS ENTIRETY TO INCLUDE FLAT ENERGY COST
ADJUSTMENT OPTION

PUBLISH DATE: SATURDAY, APRIL 7, 2012

LEGAL AD

TEAR SHEETS WANTED: One (1) please

SEND AFFIDAVIT AND BILL TO: RANDI JOHL, CITY CLERK
City of Lodi
P.O. Box 3006
Lodi, CA 95241-1910

DATED: THURSDAY, APRIL 5, 2012

ORDERED BY:

RANDI JOHL
CITY CLERK

JENNIFER M. ROBISON, CMC
ASSISTANT CITY CLERK


MARIA BECERRA
ADMINISTRATIVE CLERK

Verify Appearance of this Legal in the Newspaper – Copy to File

Faxed to the Sentinel at 369-1084 at 1:05 pm (time) on 4/5/12 (date) 2 (pages)
LNS _____ Phoned to confirm receipt of all pages at _____ (time) JMP MB CF (initials)



DECLARATION OF POSTING

**PUBLIC HEARING TO CONSIDER AMENDING LODI MUNICIPAL CODE CHAPTER
13.20 – ELECTRICAL SERVICE – BY REPEALING AND REENACTING SECTION
13.20.175, "SCHEDULE ECA – ENERGY COST ADJUSTMENT," IN ITS ENTIRETY
TO INCLUDE FLAT ENERGY COST ADJUSTMENT OPTION**

On Thursday, April 5, 2012, in the City of Lodi, San Joaquin County, California, a Notice of Public Hearing to consider amending Lodi Municipal Code Chapter 13.20 – Electrical Service – by repealing and reenacting Section 13.20.175, "Schedule ECA – Energy Cost Adjustment," in its entirety to include flat energy cost adjustment option (attached and marked as Exhibit A) was posted at the following locations:

Lodi Public Library
Lodi City Clerk's Office
Lodi City Hall Lobby
Lodi Carnegie Forum

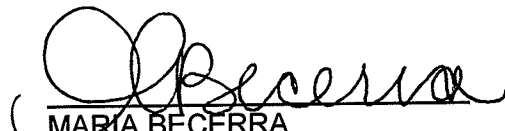
I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 5, 2012, at Lodi, California.

ORDERED BY:

**RANDI JOHL
CITY CLERK**

JENNIFER M. ROBISON, CMC
ASSISTANT CITY CLERK



MARIA BECERRA
ADMINISTRATIVE CLERK



CITY OF LODI

Carnegie Forum
305 West Pine Street, Lodi

NOTICE OF PUBLIC HEARING

Date: April 18, 2012

Time: 7:00 p.m.

For information regarding this notice please contact:

Randi Johl

City Clerk

Telephone: (209) 333-6702

EXHIBIT A

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that on **Wednesday, April 18, 2012**, at the hour of 7:00 p.m., or as soon thereafter as the matter may be heard, the City Council will conduct a public hearing at the Carnegie Forum, 305 West Pine Street, Lodi, to consider the following matter:

- a) **Amending Lodi Municipal Code Chapter 13.20 – Electrical Service – by repealing and reenacting Section 13.20.175, “Schedule ECA – Energy Cost Adjustment,” in its entirety to include flat energy cost adjustment option.**

Information regarding this item may be obtained in the Electric Utility Department, 1331 South Ham Lane, Lodi, (209) 333-6762. All interested persons are invited to present their views and comments on this matter. Written statements may be filed with the City Clerk, City Hall, 221 West Pine Street, 2nd Floor, Lodi, 95240, at any time prior to the hearing scheduled herein, and oral statements may be made at said hearing.

If you challenge the subject matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the City Clerk, 221 West Pine Street, at or prior to the close of the public hearing.

By Order of the Lodi City Council:

Randi Johl
City Clerk

Dated: April 4, 2012

Approved as to form:

D. Stephen Schwabauer
City Attorney



CITY OF LODI COUNCIL COMMUNICATION

TM

AGENDA TITLE: Public Hearing to Consider Adopting Resolution Setting Pre-Approved Engineering News Record Adjustment Index for Wastewater Rates for Residential, Commercial and Industrial Customers

MEETING DATE: April 18, 2012

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Public hearing to consider adopting resolution setting pre-approved Engineering News Record Adjustment Index for wastewater rates for residential, commercial and industrial customers.

BACKGROUND INFORMATION: City Council approved wastewater rate increases of 25 percent effective July 16, 2009; 20 percent effective July 1, 2010; 10 percent effective July 1, 2011; and 5 percent effective July 1, 2012. Also, the City Council approved an Engineering News Record – 20 Cities Average (ENR) based indexing of wastewater rates beginning with FY 2012/13. A Proposition 218 procedure was conducted that validated these actions.

Staff has regularly updated the Wastewater Utility Financial Plan with the assistance of The Reed Consulting Group, Inc., of Sacramento. A copy of the current Financial Plan is attached as Exhibit A. The recommended rate adjustments in the Financial Plan are 5 percent beginning July 1, 2012, and an estimated ENR-based indexing of 3 percent beginning July 1, 2013. The rates for this next year, attached as Exhibit B, reflect an increase of 3 percent, which is lower than the 5 percent previously approved by Council. The rate increase for this past year was 5 percent, lower than the 10-percent increase anticipated in 2009.

Usage-based wastewater utility billings will begin July 2012 for the approximately 3,000 residential customers that began receiving usage-based water utility billings in January 2011. The new wastewater fixed monthly charges will not be based upon the number of bedrooms but upon water meter readings taken during December 2011 through February 2012, with the same fixed rate charged from July 2012 through June 2013. This data is considered to best represent indoor use when irrigation is minimal or nonexistent. Average water usage during December 2011 through February 2012 was up 27 percent (11.1 versus 9.6 hundred cubic feet per household per month) compared to the same months in 2010/11, probably the result of the dry winter. Using the 2011/12 usage data would yield 27 percent higher than planned revenues and, as a result, staff will use the 2010/11 water usage information to calculate the fixed monthly residential wastewater charge.

FISCAL IMPACT: Increased revenues to the wastewater utility are required to keep up with cost of service increases and new mandated costs.

FUNDING AVAILABLE: Not applicable.

F. Wally Sandelin
Public Works Director

Prepared by Rebecca Areida-Yadav, Management Analyst
FWS/pmf
Attachments
cc: Information Systems Manager
Deputy Public Works Director – Utilities

APPROVED: _____
Konradt Bartlam, City Manager

City of Lodi -- Wastewater Utility
Financial Plan Summary

| | FY 11-12 | FY 12-13 | FY 13-14 | FY 14-15 | FY 15-16 | FY 16-17 | FY 17-18 | FY 18-19 | FY 19-20 | |
|--|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|-----|
| | 5% | 3% | 3% | 3% | 3% | 3% | 3% | 3% | 3% | |
| WASTEWATER OPERATING FUND (170) | | | | | | | | | | |
| <i>Beginning Balance</i> | 3,407,000 | 4,065,272 | 5,695,794 | 5,672,916 | 5,231,638 | 4,005,960 | 3,927,882 | 3,536,304 | 3,472,226 | |
| <i>Revenues</i> | | | | | | | | | | |
| Wastewater Sales | 13,308,990 | 13,735,000 | 14,175,000 | 14,629,000 | 15,097,000 | 15,580,000 | 16,078,000 | 16,592,000 | 17,123,000 | |
| Infrastructure Replacement | - | - | - | - | - | - | - | - | - | |
| Interest Earnings | 20,540 | 91,000 | 155,000 | 185,000 | 201,000 | 158,000 | 155,000 | 141,000 | 139,000 | |
| Other Revenues | 165,000 | 170,500 | 176,000 | 181,500 | 187,000 | 192,500 | 198,000 | 203,500 | 210,100 | |
| Transfer In for Debt Service (172) | - | 54,000 | 67,000 | 81,000 | 94,000 | 94,000 | 94,000 | 94,000 | 94,000 | |
| Transfer In for Debt Service (173) | 1,865,000 | 1,495,000 | 14,000 | 83,000 | 98,000 | 113,000 | 129,000 | 297,000 | 415,000 | |
| Transfer From/(To) Rate Stabilization Fund (174) | - | - | - | - | - | - | - | - | - | |
| Total Revenues | 15,359,530 | 15,545,500 | 14,587,000 | 15,159,500 | 15,677,000 | 16,137,500 | 16,654,000 | 17,327,500 | 17,981,100 | |
| <i>Expenditures</i> | | | | | | | | | | |
| Transfer Out to Gen'l Fund (Cost of Services) | 1,451,478 | 1,451,478 | 1,451,478 | 1,451,478 | 1,451,478 | 1,451,478 | 1,451,478 | 1,451,478 | 1,451,478 | |
| Transfer Out to WW Capital Outlay (171) | 1,000,000 | 1,000,000 | 1,500,000 | 2,200,000 | 3,200,000 | 2,200,000 | 2,700,000 | 2,700,000 | 3,700,000 | |
| Transfer Out To WW Cap. Rsrv. (172) | 750,000 | - | - | - | - | - | - | - | - | |
| Administration & Other | 1,619,450 | 1,356,500 | 1,313,400 | 1,361,300 | 1,411,200 | 1,463,100 | 1,517,100 | 1,573,100 | 1,632,100 | |
| Plant Maintenance | 4,349,290 | 4,522,000 | 4,701,000 | 4,887,000 | 5,080,000 | 5,282,000 | 5,492,000 | 5,712,000 | 5,941,000 | |
| Sanitary System Maintenance | 678,880 | 703,000 | 729,000 | 755,000 | 782,000 | 810,000 | 840,000 | 870,000 | 901,000 | |
| Storm Drainage Maintenance | 698,120 | 726,000 | 755,000 | 785,000 | 817,000 | 850,000 | 885,000 | 921,000 | 958,000 | |
| Industrial System Maintenance | 37,040 | 38,000 | 39,000 | 40,000 | 41,000 | 42,000 | 43,000 | 44,000 | 45,000 | |
| 2003 Wastewater COP Debt Service | 379,000 | 381,000 | 377,000 | 378,000 | 378,000 | 377,000 | 376,000 | 378,000 | 379,000 | |
| 2004 Wastewater COP Debt Service | 2,139,000 | 2,138,000 | 2,140,000 | 2,140,000 | 2,135,000 | 2,134,000 | 2,127,000 | 2,125,000 | 2,129,000 | |
| 2007 Wastewater COP Debt Service | 1,599,000 | 1,599,000 | 1,604,000 | 1,603,000 | 1,607,000 | 1,606,000 | 1,614,000 | 1,617,000 | 1,609,000 | |
| Total Expenditures | 14,701,258 | 13,914,978 | 14,609,878 | 15,600,778 | 16,902,678 | 16,215,578 | 17,045,578 | 17,391,578 | 18,745,578 | |
| <i>Ending Balance</i> | 4,065,272 | 5,695,794 | 5,672,916 | 5,231,638 | 4,005,960 | 3,927,882 | 3,536,304 | 3,472,226 | 2,707,748 | |
| Operating Reserve (25%) | 3,238,000 | 3,229,000 | 3,277,000 | 3,350,000 | 3,426,000 | 3,504,000 | 3,586,000 | 3,673,000 | 3,761,000 | 25% |
| Available Balance | 827,272 | 2,466,794 | 2,395,916 | 1,881,638 | 579,960 | 423,882 | (49,696) | (200,774) | (1,053,252) | |
| Debt Service Coverage (min. = 1.20) | 1.26 | 1.47 | 1.44 | 1.49 | 1.54 | 1.58 | 1.63 | 1.67 | 1.72 | |
| without COST | 1.61 | 1.82 | 1.79 | 1.84 | 1.90 | 1.93 | 1.98 | 2.02 | 2.07 | |
| WASTEWATER CAPITAL OUTLAY (171) | | | | | | | | | | |
| <i>Beginning Balance</i> | 5,353,090 | 3,999,662 | 3,979,662 | 627,662 | 665,662 | 328,662 | 1,964,662 | 1,291,662 | 3,357,662 | |

| | FY 11-12 | FY 12-13 | FY 13-14 | FY 14-15 | FY 15-16 | FY 16-17 | FY 17-18 | FY 18-19 | FY 19-20 |
|--|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Revenues | | | | | | | | | |
| Transfer In (from 170) | - | - | 500,000 | 1,500,000 | 2,500,000 | 1,500,000 | 2,000,000 | 2,000,000 | 3,000,000 |
| Transfer In (from 170-Deprec.) | 1,000,000 | 1,000,000 | 1,000,000 | 700,000 | 700,000 | 700,000 | 700,000 | 700,000 | 700,000 |
| Other Revenue | - | - | - | - | - | - | - | - | - |
| Investment Earnings | - | - | - | - | - | - | - | - | - |
| Total Revenues | 1,000,000 | 1,000,000 | 1,500,000 | 2,200,000 | 3,200,000 | 2,200,000 | 2,700,000 | 2,700,000 | 3,700,000 |
| Expenditures | | | | | | | | | |
| Capital Projects | - | - | - | - | - | - | - | - | - |
| Financial Planning | 27,179 | - | - | - | - | - | - | - | - |
| Vacumm Truck Engine Repl | - | - | - | - | - | - | - | - | - |
| Replacement Vehicle 04-003 | - | - | - | - | - | - | - | - | - |
| Replacement Vehicle 04-137 | - | - | - | - | - | - | - | - | - |
| Replacement Vehicle 04-083 & 04-041 | 62,500 | | | | | | | | |
| Install CARB particulate filters | 15,000 | | | | | | | | |
| Storm Imprv | - | - | - | - | - | - | - | - | - |
| Misc. System Relocations | 102,000 | 38,000 | 39,000 | 41,000 | 43,000 | 44,000 | 46,000 | 48,000 | 50,000 |
| Misc. Wastewater Taps | 65,000 | 43,000 | 45,000 | 47,000 | 49,000 | 51,000 | 53,000 | 55,000 | 57,000 |
| Collect. System Capac. Enhanc. Projects | - | 22,000 | 225,000 | 23,000 | 243,000 | 25,000 | 263,000 | 27,000 | 285,000 |
| Wastewater Main Replac./Lining Proj. | 1,500,000 | 108,000 | 2,250,000 | 117,000 | 2,433,000 | 127,000 | 2,632,000 | 137,000 | 2,847,000 |
| Storm Drain Trash Handling System | - | 54,000 | 562,000 | 35,000 | 365,000 | - | - | - | - |
| Lift Sta. Remote Term. Unit Replac. | - | 22,000 | - | - | - | - | - | - | - |
| Fats, Oils, and Grease Program | - | - | - | - | - | - | - | - | - |
| Replace 04-95 Vacuum Truck | - | - | - | - | - | - | - | - | - |
| Decommission Fleet Service Shop | - | - | - | - | - | - | - | - | - |
| Munic. Service Center PBX Replac. | 1,000 | - | - | - | - | - | - | - | - |
| Munic. Service Center Parking Reconstr. | 73,000 | - | - | - | - | - | - | - | - |
| Lift Station Generator Replacements | 74,000 | 108,000 | - | 58,000 | - | - | - | - | - |
| Vehicles and Other Equipment | 150,000 | 162,000 | 169,000 | 175,000 | 182,000 | 190,000 | 197,000 | 205,000 | 213,000 |
| White Slough Compliance Studies & Rpts | 164,000 | - | - | - | - | - | - | - | - |
| Plant Maint. & Land Applic. Area Improv. | - | - | - | - | - | - | - | - | - |
| Irrigation Improvements - WSWPCF | 100,000 | - | - | - | - | - | - | - | - |
| Primary Chain & Flights | - | 75,000 | 75,000 | 75,000 | 75,000 | - | - | - | - |
| Boiler Retube | 19,749 | - | - | 20,000 | - | - | - | - | - |

| | FY 11-12 | FY 12-13 | FY 13-14 | FY 14-15 | FY 15-16 | FY 16-17 | FY 17-18 | FY 18-19 | FY 19-20 |
|--|------------------|------------------|----------------|----------------|----------------|------------------|------------------|------------------|------------------|
| Headworks Ventilation Upgrade | - | 30,000 | - | - | - | - | - | - | - |
| Equalization Pond Check Valve | - | 15,000 | - | - | - | - | - | - | - |
| Maintenance Shop Rollup Doors | - | 15,000 | - | - | - | - | - | - | - |
| Boiler System Inline Water Conditioner | - | 15,000 | - | - | - | - | - | - | - |
| Roadway Improvements | - | 50,000 | - | 50,000 | - | - | 50,000 | - | - |
| Fence Repairs/Upgrades | - | 25,000 | 25,000 | - | 25,000 | - | - | 25,000 | - |
| Anaerobic Digester Painting | - | 130,000 | - | - | - | - | - | - | - |
| Pond Lining Project | - | - | 1,350,000 | 1,404,000 | - | - | - | - | - |
| Plant Security Enhancements | - | - | - | - | - | - | - | - | - |
| Miscellaneous Future Projects | - | 108,000 | 112,000 | 117,000 | 122,000 | 127,000 | 132,000 | 137,000 | 142,000 |
| Total Expenditures | 2,353,428 | 1,020,000 | 4,852,000 | 2,162,000 | 3,537,000 | 564,000 | 3,373,000 | 634,000 | 3,594,000 |
| Ending Balance | 3,999,662 | 3,979,662 | 627,662 | 665,662 | 328,662 | 1,964,662 | 1,291,662 | 3,357,662 | 3,463,662 |

| | FY 11-12 | FY 12-13 | FY 13-14 | FY 14-15 | FY 15-16 | FY 16-17 | FY 17-18 | FY 18-19 | FY 19-20 |
|--------------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Restricted Debt Service Reserve | 2,332,103 | 2,395,156 | 2,395,156 | 2,395,156 | 2,395,156 | 2,395,156 | 2,395,156 | 2,395,156 | 2,395,156 |
| 2007 COP Proceeds (w/ fiscal agent) | 299,003 | 299,003 | 299,003 | 299,003 | 299,003 | 299,003 | 299,003 | 299,003 | 299,003 |
| Cash Deficit (amt. owed for past DS) | 63,053 | - | - | - | - | - | - | - | - |

IMF WASTEWATER FACILITIES (173)

| | | | | | | | | | |
|---|----------------|---------------|---------------|---------------|----------------|----------------|----------------|----------------|----------------|
| Beginning Balance | 2,172,523 | 724,523 | 13,523 | 82,523 | 97,523 | 112,523 | 128,523 | 297,140 | 415,140 |
| Revenues | | | | | | | | | |
| Wastewater IMF | 397,000 | 770,000 | 333,000 | 346,000 | 360,000 | 375,000 | 390,000 | 405,000 | 421,000 |
| Wastewater IMF from PCE/TCE & WTP | | | | | | | | | |
| Interest Earnings | 33,000 | 14,000 | - | 2,000 | 3,000 | 4,000 | 4,000 | 10,000 | 15,000 |
| Total Revenues | 430,000 | 784,000 | 333,000 | 348,000 | 363,000 | 379,000 | 394,000 | 415,000 | 436,000 |
| Expenditures | | | | | | | | | |
| Transfer Out (to 170 for Debt Service) | 1,865,000 | 1,495,000 | 14,000 | 83,000 | 98,000 | 113,000 | 129,000 | 297,000 | 415,000 |
| Transfer Out (to 172 for past Debt Service) | - | - | - | - | - | - | - | - | - |
| Transfer Out (refund PCE/TCE IMF) | - | - | 250,000 | 250,000 | 250,000 | 250,000 | 96,383 | - | - |
| Capital Projects | - | - | - | - | - | - | - | - | - |
| Decommission Old Fleet Services Shop | - | - | - | - | - | - | - | - | - |
| City-Wide IMF Program Update | 13,000 | - | - | - | - | - | - | - | - |
| Total Expenditures | 1,878,000 | 1,495,000 | 264,000 | 333,000 | 348,000 | 363,000 | 225,383 | 297,000 | 415,000 |
| Ending Balance | 724,523 | 13,523 | 82,523 | 97,523 | 112,523 | 128,523 | 297,140 | 415,140 | 436,140 |
| Owed to Fund 170 for Debt Service | - | 370,000 | 2,223,000 | 4,007,000 | 5,775,000 | 7,527,000 | 9,263,000 | 10,832,000 | 12,282,000 |

WW Rate Stabilization Fund (174)[illegible]

| | FY 11-12 | FY 12-13 | FY 13-14 | FY 14-15 | FY 15-16 | FY 16-17 | FY 17-18 | FY 18-19 | FY 19-20 |
|-----------------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| Ending Balance | 500,000 | 500,000 | 500,000 | 500,000 | 500,000 | 500,000 | 500,000 | 500,000 | 500,000 |

| | | | | | | | | | |
|--------------------------------------|-------------------|-------------------|------------------|------------------|------------------|------------------|------------------|-------------------|------------------|
| Aggregate End-of-Year Balance | 11,984,000 | 12,883,000 | 9,577,000 | 9,189,000 | 7,641,000 | 9,215,000 | 8,319,000 | 10,439,000 | 9,802,000 |
| Operating Reserve (25%) | 3,238,000 | 3,229,000 | 3,277,000 | 3,350,000 | 3,426,000 | 3,504,000 | 3,586,000 | 3,673,000 | 3,761,000 |
| Restricted DS Reserve | 2,332,103 | 2,395,156 | 2,395,156 | 2,395,156 | 2,395,156 | 2,395,156 | 2,395,156 | 2,395,156 | 2,395,156 |
| 2007 COP Proceeds | 299,003 | 299,003 | 299,003 | 299,003 | 299,003 | 299,003 | 299,003 | 299,003 | 299,003 |
| Rate Stabilization Fund | 500,000 | 500,000 | 500,000 | 500,000 | 500,000 | 500,000 | 500,000 | 500,000 | 500,000 |
| Net Available for Capital Projects | 5,614,894 | 6,459,841 | 3,105,841 | 2,644,841 | 1,020,841 | 2,516,841 | 1,538,841 | 3,571,841 | 2,846,841 |

| City of Lodi -- Wastewater Utility Financial Plan Assumptions | | | | | | | | | | |
|--|----------|----------|----------|----------|----------|----------|----------|----------|----------|------|
| | FY 11-12 | FY 12-13 | FY 13-14 | FY 14-15 | FY 15-16 | FY 16-17 | FY 17-18 | FY 18-19 | FY 19-20 | |
| Financial Assumptions | | | | | | | | | | |
| General Inflation | 3.0% | 3.0% | 3.0% | 3.0% | 3.0% | 3.0% | 3.0% | 3.0% | 3.0% | 3.0% |
| Labor Inflation | 3.4% | 3.4% | 3.4% | 3.4% | 3.4% | 3.4% | 3.4% | 3.4% | 3.4% | 3.4% |
| Material/Energy Inflation | 4.5% | 4.5% | 4.5% | 4.5% | 4.5% | 4.5% | 4.5% | 4.5% | 4.5% | 4.5% |
| Construction Inflation | 4.0% | 4.0% | 4.0% | 4.0% | 4.0% | 4.0% | 4.0% | 4.0% | 4.0% | 4.0% |
| Interest Earnings | 1.5% | 2.0% | 2.5% | 3.0% | 3.5% | 3.5% | 3.5% | 3.5% | 3.5% | 3.5% |
| Cust. Growth (SSUs) | - | - | 50 | 51 | 52 | 53 | 54 | 55 | 56 | |
| Wastewater Mitigation Impact Fee | \$ 6,140 | \$ 6,390 | \$ 6,650 | \$ 6,920 | \$ 7,200 | \$ 7,490 | \$ 7,790 | \$ 8,100 | \$ 8,420 | |

Exhibit B
City of Lodi -- Wastewater Utility
Current and Proposed Wastewater Rates

| | Current | July 2012 |
|---|----------------|------------------|
| Residential | | |
| Percent Increase | | 3 |
| Flat Rates (\$/month) | | |
| 1 Bedroom | \$ 24.47 | \$ 25.20 |
| 2 Bedroom | \$ 32.62 | \$ 33.60 |
| 3 Bedroom | \$ 40.78 | \$ 42.00 |
| 4 Bedroom | \$ 48.93 | \$ 50.40 |
| 5 Bedroom | \$ 57.09 | \$ 58.80 |
| 6 Bedroom | \$ 65.24 | \$ 67.20 |
| 7 Bedroom | \$ 73.40 | \$ 75.60 |
| Usage-Based Rates | | |
| Service Charge (\$/month) | \$ 22.28 | \$ 22.95 |
| Usage Charge (\$/CCF) (1) | \$ 2.53 | \$ 2.61 |
| Non-Residential (\$/month) | | |
| Moderate Strength (per SSU) | \$ 32.62 | \$ 33.60 |
| High Strength | | |
| Flow (per MG, annual basis) | \$ 3,303.25 | \$ 3,402.35 |
| BOD (per 1,000 lbs, annual basis) | \$ 545.12 | \$ 561.47 |
| SS (per 1,000 lbs, annual basis) | \$ 340.84 | \$ 351.07 |
| Grease Interceptor & Septic Holding Tank | | |
| Waste within City Limits (per 1,000 gal.) | \$ 288.63 | \$ 297.29 |
| Septic (only) Holding Tank Waste | | |
| Outside City Limits (per 1,000 gal.) | \$ 612.73 | \$ 631.11 |
| Disposal to Storm Drain System (per MG) | \$ 303.18 | \$ 312.28 |

Notes:

(1) Winter water usage determined as average monthly usage from December through February.

RESOLUTION NO. 2012-_____

A RESOLUTION OF THE LODI CITY COUNCIL
SETTING WASTEWATER RATES FOR RESIDENTIAL,
COMMERCIAL AND INDUSTRIAL CUSTOMERS

=====

WHEREAS, Resolution No. 2009-100 approved wastewater rate increases of 25 percent effective July 2009; 20 percent effective July 2010; 10 percent effective July 2011; and five percent effective July 2012; and also approved an Engineering News Record – 20 Cities Average (ENR) based indexing of wastewater rates beginning with FY 2012/13. A Proposition 218 procedure was conducted that validated these actions; and

WHEREAS, staff has regularly updated the Wastewater Utility Financial Plan with the assistance of the The Reed Consulting Group, Inc., of Sacramento, and the recommended rate adjustment in the Financial Plan are five percent beginning July 2012 and an estimated three percent beginning July 2013; and

WHEREAS, the rates for current adjustment reflect a three percent increase that is substantially lower than the five percent increase previously approved by Council; and

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve usage-based and flat rat monthly wastewater rates as outlined on Exhibit A attached with the effective date of the increase to be July 1, 2012.

Dated: April 18, 2012

=====

I hereby certify that Resolution No. 2012-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held April 18, 2012, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

**City of Lodi -- Wastewater Utility
Current and Proposed Wastewater Rates**

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|---|-------------|-------------|
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Notes:

(1) Winter water usage determined as average monthly usage from December through February.



***Please immediately confirm receipt
of this fax by calling 333-6702***

CITY OF LODI
P. O. BOX 3006
LODI, CALIFORNIA 95241-1910

ADVERTISING INSTRUCTIONS

**SUBJECT: PUBLIC HEARING TO CONSIDER ADOPTING RESOLUTION
SETTING PRE-APPROVED ENGINEERING NEWS RECORD
ADJUSTMENT INDEX FOR WASTEWATER RATES FOR
RESIDENTIAL, COMMERCIAL, AND INDUSTRIAL CUSTOMERS**

PUBLISH DATE: SATURDAY, MARCH 24, 2012

LEGAL AD

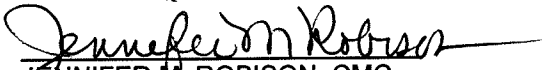
TEAR SHEETS WANTED: One (1) please

**SEND AFFIDAVIT AND BILL TO:
LNS ACCT. #0510052**

RANDI JOHL, CITY CLERK
City of Lodi
P.O. Box 3006
Lodi, CA 95241-1910

DATED: THURSDAY, MARCH 22, 2012

**ORDERED BY: RANDI JOHL
CITY CLERK**


JENNIFER M. ROBISON, CMC
ASSISTANT CITY CLERK

MARIA BECERRA
ADMINISTRATIVE CLERK

Verify Appearance of this Legal in the Newspaper – Copy to File

| | | |
|-----|---|----------------------------------|
| LNS | Faxed to the Sentinel at 369-1084 at _____ (time) on _____ (date) _____ (pages) | |
| | Phoned to confirm receipt of all pages at _____ (time) | CF _____ MB _____ JMR (initials) |



DECLARATION OF POSTING

PUBLIC HEARING TO CONSIDER ADOPTING RESOLUTION SETTING PRE-APPROVED ENGINEERING NEWS RECORD ADJUSTMENT INDEX FOR WASTEWATER RATES FOR RESIDENTIAL, COMMERCIAL, AND INDUSTRIAL CUSTOMERS

On Thursday, March 22, 2012, in the City of Lodi, San Joaquin County, California, a Notice of Public Hearing to consider adopting resolution setting pre-approved Engineering News Record adjustment index for wastewater rates for residential, commercial, and industrial customers (attached and marked as Exhibit A) was posted at the following locations:

Lodi Public Library
Lodi City Clerk's Office
Lodi City Hall Lobby
Lodi Carnegie Forum

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 22, 2012, at Lodi, California.

ORDERED BY:

**RANDI JOHL
CITY CLERK**


JENNIFER M. ROBISON, CMC
ASSISTANT CITY CLERK

MARIA BECERRA
ADMINISTRATIVE CLERK



CITY OF LODI

Carnegie Forum
305 West Pine Street, Lodi

NOTICE OF PUBLIC HEARING

Date: April 18, 2012

Time: 7:00 p.m.

For information regarding this notice please contact:

Randi Johl

City Clerk

Telephone: (209) 333-6702

EXHIBIT A

NOTICE OF PUBLIC HEARING

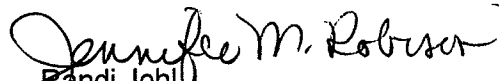
NOTICE IS HEREBY GIVEN that on **Wednesday, April 18, 2012**, at the hour of 7:00 p.m., or as soon thereafter as the matter may be heard, the City Council will conduct a public hearing at the Carnegie Forum, 305 West Pine Street, Lodi, to consider the following matter:

- a) **Resolution setting pre-approved Engineering News Record adjustment index for wastewater rates for residential, commercial, and industrial customers (as identified on the attached Exhibit A).**

Information regarding this item may be obtained in the Public Works Department, 221 West Pine Street, Lodi, (209) 333-6706. All interested persons are invited to present their views and comments on this matter. Written statements may be filed with the City Clerk, City Hall, 221 W. Pine Street, 2nd Floor, Lodi, 95240, at any time prior to the hearing scheduled herein, and oral statements may be made at said hearing.

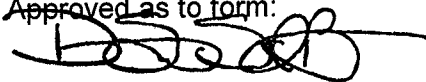
If you challenge the subject matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the City Clerk at, or prior to, the public hearing.

By Order of the Lodi City Council:


Jennifer M. Robison
City Clerk

Dated: March 21, 2012

Approved as to form:



D. Stephen Schwabauer
City Attorney

**City of Lodi -- Wastewater Utility
Current and Proposed Wastewater Rates**

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|---|-------------|-------------|
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CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Post for Vacancy on the Lodi Senior Citizens Commission

MEETING DATE: April 18, 2012

PREPARED BY: City Clerk

RECOMMENDED ACTION: Direct the City Clerk to post for vacancy on the Lodi Senior Citizens Commission.

BACKGROUND INFORMATION: The City Clerk's Office was notified that a member of the Lodi Senior Citizens Commission has passed away. Therefore, it is recommended that Council direct the City Clerk to post for this vacancy. Government Code Section 54970 et seq. requires that the City Clerk post for vacancies to allow citizens interested in serving to submit an application.

Lodi Senior Citizens Commission

Winona Ellwein Term to expire December 31, 2013

FISCAL IMPACT: Not applicable.

FUNDING AVAILABLE: Not applicable.

Randi Johl
City Clerk

RJ/JMR

APPROVED: _____
Konradt Bartlam, City Manager